United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

B P/S

74-1493

United States Court of Appeals
FOR THE SECOND CIRCUIT

IN THE MATTER
of
R. HOE & CO., INC.,
Debtor.

In Proceedings for the Reorganization of a Corporation

ABARTA CORP. (d/b/a PRESS PUBLISHING CO.),
Claimant-Appellant,
against
JAMES B. KILSHEIMER, III and
ROBERT M. CORRAO, as Trustees,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUN 28 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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1. Proof of Claim Dated January 2, 1970, Containing:

   (a) Copy of Contract Between the Debtor and Press Publishing Dated November 1, 1968;

   (b) Copy of Order Number 29 Entered November 3, 1969 Approving Agreement Between Trustee and Press Publishing Co.

Identical to Proof of Claim printed herein at pages A40 to A52.

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RELEVANT DOCKET ENTRIES

[illegible] 21 69	(4) Filed petition and order authorizing trustee to retain WINTHROP, STIMSON, PUTNAM & ROBERTS, Esqs. as his attorneys. - Ryan, J. - cs4
Jul 14-69	(5) Filed notice of appearance by SEC and demand for copies of all papers and notice of all matters to be served on SEC. - Approved by Ryan, J. -cs4
Jul 14-69	(6) Filed transcript of testimony of July 9, 1969
Jul 15-69	(7) Filed order approving trustees bond. - Ryan, J. -cs4
Jul 15-69	(8) Filed exhibits and Order to show cause why it is not in the best interest of the estate of the debtor for the Court to direct the debtor to devote its principal efforts to the manufacture and delivery of presses to such of the press customers who agree to prepay to the Trustee the balances to become due under their respective contracts, etc. ret. 7/17/69 at 10:30 A.M. in Room 36; and providing for time and manner of notice. - Ryan, J.- cs4
[illegible] 1 15-69	(9) Filed affdvt. of John E. Smith in re telegraphic notice of above OSC.
[illegible] 1 18-69	(10) Filed transcript of testimony of July 7, 1969
[illegible] 1 18-69	(11) Filed transcript of testimony of July 17, 1969
[illegible] 1 22-69	(12) Filed petition and order authorizing trustee to employ S.D. Leidesdorf & Co. as his accountant.- Ryan, J. - cs4
[illegible] 1 22-69	(13) Filed affdvt. of publication in re motion # 8
[illegible] 1 22-69	---- Filed memo endorsed on motion #8 granting hearing after application to the extent indicated. See Reporters minutes of July 17, 1969. Submit order on adjourned hearing to be held on 7/22/69 at 10:30 A.M. in Room 35. So ordered. - Ryan, J.
[illegible] 1 22-68	(14) Filed order authorizing trustee to direct debtor to devote its principal efforts to the manufacture and delivery of presses to certain customers (as indicated herein) upon payments to the Trustee, etc. - Ryan, J. - cs4
[illegible] 1 28-69	(15) Filed supplemental order to order #14, that the name of Norwest Publishing Co. be added to the list of customers identified in the first ordering paragraph of above order (filed 7/22/69 #14), etc. - Ryan, J. - cs4
[illegible] 1 28-69	(16) Filed order that all matters arising in this proceeding not specifically reserved to the judge by provisions of Chap.X, be hereby referred to Referee Lowenthal (SPECIAL MASTER). He shall [illegible] report to the judge. - Ryan, J. -- dlvd. copy to Referee. - cs4 etc
	for all matters reserved to the judge.

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Relevant Docket Entries

R. Hoe & Co., Inc. — 69 B 461 -- page 5 (DOCKET NUMBER)

DATE	PROCEEDINGS
Nov 3-69	(54) Filed exhibits and order #29 approving agreement between Trustee and Press Publishing Co. - Ryan, J.- cs4
Nov 5-69	(55) Filed transcript of testimony of 9/24/69
Nov 7-69	(56) Filed transcript of testimony of 10/7/69
Nov 12-69	(57) Filed affdvts of publication in re filing of claims.
Nov 14-69	(58) Filed affdvt. of service by mail in re filing of claims.
Nov 14-69	(59) Filed petition and order #30 approving agreement between Trustee and Call Chronicle Newspapers, Inc.- Ryan, J. - cs4
Nov 14-69	(60) Filed petition and order #31 authorizing Trustee to enter into a lease agreement with Schenck Trobel Corp. - Ryan, J. - cs4
Nov 20-69	(61) Filed petition of Mansfield Journal Co. and notice of motion for an order requiring the Trustee to affirm or reject a certain agreement dated 5/22/68 between petitioner and R.Hoe & Co. - ret. 12/2 at 10:00 AM in Room 506
Nov 20-69	(62) Filed memorandum by Levy, Levy & Ruback in support of above motion.
Nov 20-69	(63) Filed affdvt. and order #32 with respect to the Trustee's report of operations for the period ending October 31, 1969 - cs4
Nov 20-69	(64) Filed Trustee's report and summary of the operations for October 1969. - cs4
Nov 25-69	(65) Filed exhibits, affdvt. of Trustee and OSC that all creditors, stockholders, etc. show cause at 10:30 AM in Room 110 on 1/6/70, why an order should not be made approving the sale and lease of certain assets of the debtor comprising the newspaper and publication press division in accordance with the terms of an offer by Fasco, A.G. and in re the metal decorating press div. in accordance with the terms of an offer by Sun Chem. Corp. -- It is ordered that the Trustee and Fasco, A.G. file with the Clerk of this Court on or before 12/5/69 the documents referred to in the Fasco offer, etc.; and it is further ordered, that any person desiring to submit any counteroffer for all or any part of the debtors assets, shall set forth such counteroffer in reasonable detail and file it with the Clerk of the Court and counsel to Trustee on or before 12/26/69; further ordered that the Trustee give notice not later than 12/2/69 to all creditors, stockholders, etc. by mail and providing for time and manner of publication; further ordered that a hearing scheduled for 12/29 at 2:15 PM in Room 1306 is hereby rescheduled for 1/6/70 at 10:30 AM in Room 110. - Ryan, J. - cs4

-continued on page 6-

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Relevant Docket Entries

DATE	PROCEEDINGS
Nov 25-69	(66) Filed petition of Trustee and order #33; approving issuance of Trustee's certificate of Indebtedness to the Bank of New York. - Ryan, J. - csl4
Nov 25-69	(67) Filed petition of Trustee and order #34, authorizing Trustee to give notice to certain creditors of the debtor concerning the time and manner of filing and allowing claims. - Ryan, J. - csl4
Nov 25-69	(68) Filed transcript of testimony of November 24, 1969
Dec 1-69	(69) Filed affdvt. of Colin S. Brooks of MAILING in re orders #25 and 34.
Dec 2-69	(70) Filed transcript of testimony of 11/12/69
Dec 3-69	(71) Filed order #35 approving agreement between Trustee and W.H. Hutchinson & Son, Inc. - Ryan, J. - csl4
Dec 5-69	(72) Filed affdvt. of publication in re paper #65
Dec 5-69	(73) Filed Notice of filing of Fasco A.C. Documents in accordance with Judge Ryans order.
Dec 9-69	(74) Filed order #36, extending time for filing of Trustee's report with respect to executory contracts from 12/8 to 2/16/70
Dec 16-69	(75) Filed order #37 with respect to the trustee's report of operations for the period ending Nov 30, 1969 - Ryan, J. - csl4
Dec 16-69	(76) Filed Trustees report and summary of operations for November 1969 - csl4
Dec 18-69	(77) Filed affdvt. of service by Owen Belgrave (The Bank of New York as transfer agent for debtor)
Dec 18-69	(78) Filed affdvt. of Thomas J. Cahill in re compliance with order to show cause (paper #65) filed on 11/25.
Dec 18-69	(79) Filed affdvt. of Henry DiRusso of service by mail in re paper #65
Dec 19-69	(80) Filed order #38, approving agreement between Trustee and Western Metal Decorating Co. - Ryan, J. - csl4
Dec 19-69	(81) Filed order #39, approving agreement between Trustee and Phoenix Closures, Inc. - csl4
Dec 23-69	(82) Filed statement of CORNELL UNIVERSITY pursuant to Sec. 610 - csl4 (dlvd. copy to Trustee)
Dec 30-69	(83) Filed statement of Sylvan H. Nathan, Chairman of Creditors' Committee pursuant to Sec. 211 (dlvd. copy to Trustee)
Dec 30-69	(84) Filed statement of Isidor F. Leinwand and Irving G. Schneider pursuant to Sec. 210 - csl4 (dlvd. copy to Trustee)
Jan 6-70	(85) Filed affdvt. of Stuart A. Summit in opposition to Sale and Lease of certain of debtors assets (on behalf of Cutler-Hammer.
Jan 6-70	(86) Filed statement of attorney for Cutler-Hammer (Stuart A. Summit) in re order to show cause ret. 6/6 and filed on 11/25

--continued page 7--

Relevant Docket Entries

DATE	PROCEEDINGS
Feb 6-70	(104) Filed opinion #36545 re order authorizing sale and lease of press division of debtor. I find that under the circumstances present in this case it is in the best interests of the creditors and shareholders,as well as other interested parties,that the Debtor's Press Division, including its Metal Decorating Press Division be sold now without awaiting the promulgation or approval of a plan of reorganization...**Ryan,J. (See opinion)
Feb/9/70	(105) Filed Order # 48 authorizing trustee to direct Hoe to devote its principal efforts to the manufacture and delivery of presses ordered by Rualist and Gulf. cs4 Ryan J.
Feb/11/70	Filed (106) transcript of proceedingsd dated 7/7/69
Feb/11/70	(107)Filed transcript of proceedings dated7/17,69
Feb/11/70	(108) Filed Transcript of proceedings dated 7/22/69
Feb/11/70	(109) Filed transcript of proceedings dated 7/23/69
Feb/11/70	(110) Filed transcript of proceedings dated 1/6/70
Feb/11/70	(111) Filed transcript of proceedings dated 1/6/70
Feb.13-70	(112) Filed order number 49 vacating that portion of the Court's order of 7-9-69 which stayed actions against the debtor insofar as that order stayed the action of Gene Merritt against the debtor. Ryan,J.
Feb/13/70	(113) Filed Trustees memorandum of law in support of order #49 above.
Feb.13-70	Filed memo endorsed on paper #91 "The within motion is granted"** Ryan,J.....
Feb.17-70	(114) Filed power of attorney of Cornell University(Shareholder)
Feb/13/70	(115) Filed order # 50 authorizing Trustee not to file a classified statement of credit extended and a profit and loss statement with respect to his report for the period ending 1/31/70 Ryan J. cs 4
Feb/13/70	(116) Filed order # 51 extending time for filing of trustees report with respect to executory contracts to 4/15/70 Ryan J. cs 4
Feb/13/70	(117) Filedorder # 52 authorizing trustee to examine persons named as defendants Ryan J. cs4
Feb/13/70	(118) Filed order # 53 vacating as to Donald Odgers provisions of papagraph 21 of order approving petition, and appointing trustee Ryan J cs4
Feb/19/70	(119) Filed Trustees report and summary of operations of the business of R.Hoe & Co Inc., for January, 1970 cs-4
Feb/17/70	(120) Filed Order # 54 ordered that the Trustee be and he is hereby authorized not to file a classified statement of credit extended and a profit and loss statement withihis report for the period ending February 28, 1970 Ryan J.cs4
Feb/17/70	(121) Filed Trustees report and summary of the operations of the oporations of the business of R.Hoe & Co.,Inc., for February, 1970 cs4

(cont of page 9)

Relevant Docket Entries

paper # 19 R. Hoe & Co.,Inc. 69 B 461

DOCKET NUMBER

DATE	PROCEEDINGS
11-24-71	Order #116 approving payment of $350,000 to James Talcott, (361)..Ryan, J....sc Inc.
12-2-71	(362) Filed Trustee's report and summary of the operations of t the Business of R. Hoe & Co., Debtor, for October,1971
12-7-71	(363) Filed affidavit and Order to show Cause,requiring H. Wood to designate that portion of the Debtor's inventory it claims not to be usable under its offer of Dec. 30, 1969,etc. ret.12-13-71 10:30 AM,Room 128...Ryan, J.
12-10-71	(364) Filed Offering of Park Corporation in accordance with Order by Ryan, J. dated November 10,1971
12-10-71	(365) Filed Order #117: Appointin special master to hear and report on objections to proofs of claim.
12-13-71	(366) Filed Notice of Hearing of objection to the allowance of the claim filed by Press Publishing Co. by the Trustee, John J. Galgay.
12-13-71	(367) Filed Notice of hearing or objection to the allowance of the claim filed by Alox Corp.,et al.,
12-13-71	(368) Filed Notice of Hearing by the Trustee inobjection to claim allowance ofAgfa-Gevaert, Inc & Et-Al.
12-13-71	(369) Filed Notice of hearing by the Trustee in objection toClaim allowance of Alabama Oxygen Co., & Et-Al.
12-16-71	(370) Filed Order No. 118 extending the time for the Trustee to apply for a direction as to the form and manner of a statement to creditors, stockholders an Securities and Exchange Comm.Ryan, J. sc
12-20-71	(371) Filed notice of intention to appear,by Joseph W.Burns attorney for Taft Contracting Co. on Dec.28,71.
12-20-71	(372) Filed application for allowance of the claim of Taft Contracting Co.,Inc by Joseph W. Burns,Atty for Claim.
12-23-71	(373) Filed transcript dated Sept. 16, 71
12-23-71	(374) Filed transcript dated October 26, 71
12-28-71	(375) Filed order #119 authorizing the trustee to sell machinery and equipment of debtor... C C S
12-28-71	(376) Filed order #120 authorizing trustee to honor pension obligations of the debtor to its employees.Cs
12-30-71	(377) Filed stip that the time of Nohab to reply to counterclaims is extended from 12-21-71 to Jan.31-72...
1-4-72	(378) Filed affidavit of A.T. Bonucchi,dated Dec.24,71.
1-4-72	(379) Filed trustee's report and summary of operations for Nov.1971 6cs.

Over

FORM BK 74-C
SEP. 1961

UNITED STATES DISTRICT COURT

BANKRUPTCY DOCKET - CONTINUATION

R. Hoe & Co.

	PROCEEDINGS
1-17-72	(380) Filed petition for a determination of the effect of Trustee's assumption of the Patent License [illegible] Cutler-Hammer, Inc and the Debtor, and [illegible] pertaining thereto.
1-17-72	Memo-Endorsed attached to above, Memorandums will be set for oral argument, if necessary. So Ordered. Ryan, J/
1-17-72	(381) Filed Order No. 121, authorizing Trustee to Give notice to certain creditors of the Debtor concerning the time and manner of filing and allowing claims.Ryan, J.
1-24-72	(382) Filed order No.122 extending the time for trustee to apply for direction as to the form and manner of a statement to creditors, stockholders and securities and exchange commission...
1-25-72	(383) Filed Affidavit of Henry DeRusso Dated Jan 19,72
1-27-72	(384) Filed Trustee's report and summary of the operations of the business of R. Hoe & Co.,Inc.,Debtor, for December 1971.
1-31-72	(385) Filed stipulation that the time of AB Wohab to reply to the counterclaims of the Trustee expiring Jan. 31,72 is extended to and including March 31,72....Ryan, J.
3-1-72	(386) Filed Trustee's report and summary of the operations of the business of R. Hoe & Co., Inc.,Debtor, for Jan. 1972.
3-7-72	(387) Filed potition and notice of motion. Returnable March 21, 72.
3-13-72	Filed Stobb Exhibit A.
3-13-72	Filed Trustee's Exhibit #3
3-13-72	Filed Trustee's Exhibit #2
3-13-72	Filed Court Exhibits Re:Hearings in Claims, 12-20-71
3-13-72	Filed Trustees Exhibit #4
3-13-72	(388) Filed Memorandum of Law Re:Opposition of Coats.
3-13-72	(389) Filed Memorandum of Claimant Alberta Corp.
3-13-72	(390) Filed notice of Non-Acquiescence and intention to [illegible]
3-13-72	(391) Filed Memorandum in support of Trustee's objection to the proof of claim of Press Publishing Co.
3-13-72	(392) Filed reply Memorandum of Alberta Corp.
3-13-72	(393) Filed reply Memorandum in support of Trustee's objection to the proof of claim of Press Publishing Co.
3-13-72	(394) Filed transcript dated Dec. 28, 29, 1971
3-13-72	(395) Filed Report of U. S. Magistrate sitting as Special Master Harold J. Hoey, U.S. Magistrate.
3-13-72	Filed copy of order appointing Special Master to hear and report on objections to proofs of claims.
3-13-72	Filed Trustees Exhibit #5
3-13-72	Filed Trustee's Exhibit #1
3-13-72	Filed Court Exhibit #2
3-13-72	Filed Court Exhibit #3
3-13-72	Filed Court Exhibit #4
3-13-72	Filed Court Exhibit #5

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Relevant Docket Entries

R. Hoe & Co. Inc. 69 B 461

Paper # DOCKET NUMBER

DATE	PROCEEDINGS
3-13-72	Filed Court Ex.#6
3-13-72	Filed Court Ex.#7
	Court Ex. #8 previously filed 12-30-71-paper #372
3-13-72	Filed Court Ex.#8
3-13-72	Filed Court Ex. #9.
3-13-72	(396) Filed Notice of filing of Special Master's Report. & Certificate of Service by Harold J. Ruby, U.S. Magistrate
3-21-72	(397) Filed memorandum of Trustee in opposition to the treatment of a certain debt to Cabot-Fiske, Inc. a an expense of the Trustee's Administration.
3-27-72	(398) Filed stipulation that the time of AB Nohab to reply to the counterclaims of John J. Galgay, contained in the Objection to Claim and Counterclaim dated 7-8-71, now expiring 3-31-72 is extended to and including April 30,72..So Ordered Ryan, J.
3-27-72	(399) Filed Order #123 approving payment of $500,000 to James Talcott, Inc.Ryan, J.
4-3-72	(400) Filed Trustee's report and summary of the operations of the business of R. Hoe & Co. Inc, Debtor, for
4-7-72	(401) Filed order Number 124 approving agreement with A B Nohab.Ryan, J.
4-12-72	(402) Filed Interim Report for March, 1972. (4c)
4-13-72	(403) Filed transcript dated 4-13-72.
4-13-72	(404) Filed transcript dated 4-13-72.
4-13-72	(405) Filed transcript dated 4-13-72.
5-1-72	(406) FiledStipulation(on Objection to Claim and Counterclaim) extending to and including May 31, 72 time of AB Nohab to move or replyRyan, J.
5-3-72	(407) Filed Trustee's report and summary of the operations of the Business of R. Hoe & Co. Inc, Debtor, for March-72
5-26-72	(408) Filed Trustee's report and summary of the operations of the Business of R. Hoe & Co., Inc, Debtor, for April, 1972.(5c)
5-30-72	(409) Filed Order 125 that upon the annexed stip. between John J. Galgay, Trustee in Reorganization of R. Hoe & Mansfield Journal co., it is Ordered, that the May 22, 1968 executory contract between R. Hoe & Co., Inc and Manfield Journal Co. is rejected....Ryan, J.
5-31-72	(410) Filed Stipulation time extended from May 31, 72 to and including June 30, 72Ryan, J.
5-31-72	(411) Filed transcript dated March 21, 72
5-31-72	(412) Filed transcript dated March 27, 72

(over)

FORM BK 74-E
SEP. 1967

UNITED STATES DISTRICT COURT

BANKRUPTCY DOCKET—CONTINUATION

Relevant Docket Entries

PAPER NO.

DATE	PROCEEDINGS
12/26/73	(533) Filed STIPULATION amending agreement for the sale of Real Estate of the debtor to Storer Trucking & Rigging Co. Inc., as approved by Order No. 145 etc., JUDGE RYAN, DATED:12/10/73.
1/2/74	(534) Filed Trustees' memorandum in opposition to motion by: Cutler-Hammer, Inc. for reargument by: Winthrop, Stimson, Putman and Roberts, attorneys for trustee.
1/7/74	(535) Filed reply memorandum of Cutler-Hammer, Inc. in support of motion for reargument. sub. by: Stuart A. Summit of Miller and Summit, attorneys for Cutler-Hammer, Inc. Dated:1/3/74.
	ON BACK OF PAPER NO.532/
1/7/74	Filed MEMO-ENDORSED/.....The question of interest on the claim of Cutler Hammer was considered by the Court at the t time of the determination on this claim and the within motion for re consideration is denied. JUDGE RYAN, DATED: 1/3/74.
1/11/74	(536) Filed MEMORANDUM OPINION NO.40205 re claim by: Abarta Corp; d/b/a Press Publishing Co.....which reads in part..... I can see no basis for any claim, administrative or otherwise arising out of this transaction. Accordingly, the claim of Press Publishing for $177,028 is disallowed and expunged. Let an order so providing be settled on notice. JUDGE RYAN, DATED:1/10/74. SEE OPINION FOR FULL DETAILS. COPY TO BANKRUPTCY JUDGE.
1/11/74	(537) Filed reply memorandum of claimant Abarta Corp. on issue of economic duress. sub. by: Wachtell, Lipton, Rosen and Katz, attorneys for Abarta Corp. etc.
1/11/74	(538) Filed Trustee's memorandum in opposition to claim of Abarta Corp. on issue of economic duress. sub. by: Winthrop, Stimson, Putnam and Roberts, counsel for John J. Galgay, Trustee.
1/11/74	(539) Filed Memorandum of claimant Abarta Corp. on issue of economic duress. sub. by: Wachtell, Lipton, Rosen an Katz. attorneys for Abarta Corp.
1/11/74	(540) Filed memorandum of claimants Abarta Corp. and call Chronicle newspapers, Inc. in opposition to trustee's motion to reject special master's report recommending allowance of claims and in opposition of trustee's objection to claims. sub. by: Wachtell, Lipton, Rosen and Katz,
1/11/74	(541) Filed reply memorandum in support of trustee's objections to the proof of claim of Press Publishing Co. by: Winthrop, Stimson, Putnam and Roberts, counsel for John J. Galgay, trustee.
1/11/74	(542) Filed memorandum of trustee with respect to the proof of claim of Press Publishing Co. and other similar claims.

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DATE	PAPER NO. PROCEEDINGS
	by:Winthrop,Stimson,Putnam and Roberts,"Counsel for John J.Galgay,trustee.
1/11/74	(543) Filed index to record re: trustee's objection to proof of claim filed by Abarta Corp.etc.by: Winthrop Stimson,Putnam and Roberts,attorneys for John J. Galgay, trustee, in reorganization.
1/15/74	(544) Filed Trustee's report and summary of the operations of the business of R.Hoe and Co.Inc.debtor for November, 1973.Dated:12/26/73.COPY TO JUDGE RYAN.
2/6/74	(545) Filed Trustees' report and summary of the operations of the business of R.Hoe and Co.Inc. debtor,for DECEMBER,1973.
2/13/74	Filed NOTICE OF REASSIGNMENT of above entitled proceeding from JUDGE RYAN TO: JUDGE TYLER and notices mailed to: Levin and Weintraub,attorneys for Debtor,225 Broadway,NYC and Sullivan and Cromwell, 48 Wall St. NYC - - Robert M.Correo,additional trustee,31-30 Wharton Drive,Yorktown Heights,N.Y., James B. Kilsheimer,III,Successor Trustee,122 East 42nd Street,NYC 10017 - - Winthrop,Stimson,Putnam and Robert,Attorneys for Trustees,40 Wall St.,NYC 10005 - and Edwin J.Wesely,Esq.(same office) and William R. McKillip, William J. McRoberts and Glen B. Clark all additional agents c/o attorneys for trustee's address) and HON. : JOHN J.GALGAY,Special Master.... by;Bankruptcy dept.6th fl. S.D.
2/15/74	(546) Filed ORDER NO. 152/ disallowing the claim of ABARTA CORP. d/b/a Press Publishing Co.,etc. JUDGE TYLER,DATED:2/14/74. COPY TO BANKRUPTCY JUDGE. AND NOTICE OF SETTLEMENT
2/27/74	(547) Filed ORDER NO.153 authorizing the trustees to compromise and settle the suit against Arcata Graphics Corporationetc.JUDGE TYLER,DATED:2/26/74 COPY TO BANKRUPTCY JUDGE.GALGAY,Special Master.
2/27/74	(548) Filed ORDER NO.154 authorizing the settlement and compromise of a claim of General Electric Company. etc.JUDGE TYLER,DATED:2/26/74,COPY TO BANKRUPTCY, J GALGAY,Special Master.
2/27/74	(549) Filed ORDER TO SHOW CAUSE,re:petition of James B. Kilsheimer,III,trustee, why order should not be entered disallowing and dismissing certain proofs of claim,etc. before JUDGE TYLER on MARCH 8th,1974 at 3.15 P.M. in Room 2804.(forwarded)

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Relevant Docket Entries

DATE	PAPER NO.	PROCEEDINGS
2/27/74	(550)	Filed Memorandum in support of trustee's petition to dismiss proofs of claim.sub. by:Townley,Updike,Carter and Rodgers,attorneys for trustee. Forwarded
3/6/74	(551)	Filed Memorandumin opposition to trustee's motion to dismiss the claims of Sherman,etal.sub. by:Hammond and Schreiber,attorneys for claimants,1185 Avenue of the Americas.NYC Dated:3/5/74-forwarded.
3/5/74	(552)	Filed Trustees' report and summary of the operations of the business of R.Hoe and Co.Inc. debtor,for January,1974. Dated:2/26/74. COPY TO JUDGE TYLER.
3/14/74	(553)	Filed Notice of Motion and Petition for an order fixing the liability of the trustees of the Debtor to McCall Corporation and directing payment thereof as an ADM. expense,Dated: 3/13/74 by Marshall,Bratter,Greene,Allison and Tucker, attorneys for McCall Corp;RET. APRIL 5TH, 1974 at 2:15 P.M. in Room No. 128(forwarded)
6/14/73	(554)	Filed NOTICE OF APPEAL that ABARTA CORP d/b/a [illegible]SS PUBLISHING CO.,claimant appeals from the order of this Court (Order No.152) entered in above proceedings on: 2/15/74 disallowing and expunging its claim. by: Wachtell,Lipton,Rosen and Katz,attorneys for Claimant. Notice mailed to:Winthrop,Stimson,Putnam and Roberts, attorneys for trustee,40 Wall St.NYC.
3/21/74	(555)	Filed Copy of OPINION and ORDER fixing final compensation of Trustee. RYAN J. Dated 3/27/72.
3/21/74	(556)	Filed COPY of TRANSCRIPT before Judge Ryan. Dated 4/27/73.
3/21/74	(557)	Filed COPY of TRANSCRIPT before Judge Rayn. Dated 6/28/73.
3/21/74	(558)	Filed COPY of TRANSCRIPT before Judge Ryan. Dated 6/18/73.
3/21/74	(559)	Filed COPY of TRANSCRIPT before Judge Ryan. Dated 9/21/73.
3/19/74	(560)	Filed COPY of TRANSCRIPT before Judge Ryan. Dated 11/14/73
3/21/74	(561)	Filed COPY of TRANSCRIPT before Judge Ryan. Dated 10/25/73
3/29/74	(562)	Filed Trustee's report and summary of the operations of the business of R.Hoe & Co.Inc. debtor,for February,1974 by:James B.Kilsheimer III,trustee Dated:3/25/74 , COPY TO JUDGE TYLER.
4/1/74	(563)	Filed Stipulation between the attorneys for petitioner Mc Call Corp. and the attorneys for the trustee re:determination of its claim against the trustees,returnable April 5th, 1974 in Room 128 adj.to 4/19/74.

CONTINUED-ON-PAGE 35.

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Relevant Docket Entries

R. HOE & CO. INC. 69 B 461

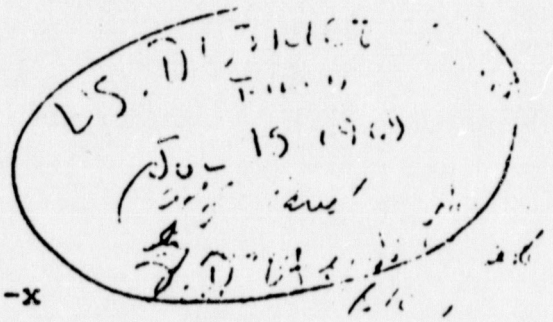
DOCKET NUMBER

DATE	PAPER NO.	PROCEEDINGS
4/1/74	(564)	Filed Memorandum of McCall Corporation relating to procedure in proceeding to determine its claim against the trustee. sub. by:Marshall,Bratter,Green Allison and Tucker,attorneys for McCall Corp. f.
4/2/74	(565)	Filed Stipulation ret.4/5/74 adj. to:4/19/74, by:Marshall,Bratter,Greene,Allison and Tucker, attorneys for McCall Corp.JUDGE:TYLER,DATED:4/1/74
4/9/74	(566)	Filed stipulation transmitting true copies of missing original court documents to the U.S.C.A.
4/9/74	(567)	Filed notice of motion to confirm report of special master and to dismiss certain claims.
4/22/74		Filed MEMO-ENDORSED....(on Back of Paper No.553) Motion withdrawn, it is so Ordered.JUDGE TYLER, DATED: 4/19/74.
4/18/74	(568)	Filed NOTICE that the record on appeal in the above matter has been certified and transmitted to the U.S. Court of Appeals for the Second Circuit this 16th day of April,1974.
5/2/74	(569)	Filed REPLY MEMORANDUM in support of trustee's motion to dismiss proofs of claim sub. by:Townley, Updike,Carter and Rodgers,attorneys for trustee.
5/2/74	(570)	Filed CLAIMANTS' POST-ARGUMENT MEMORANDUM-with leave of Court granted at argument held on 3/8/74, in opposition to the trustee's motion to dismiss the claims of Sherman and both Silvers. sub. by: Hammond and Schreiber,attorneys for claimants., Dated:5/1/74.
5/2/74	(571)	Filed transcript of testimony before JUDGE RYAN, DATED: 5/23/72.
5/2/74	(572)	Filed MEMORANDUM-DECISION NO. 10662 re:James B. Kilsheimer,III's move to disallow and to dismiss for failure to state a claim under 10(b) of the Securities Exchange Act of 1934 etc..... Accordingly, the four proofs of claim are dismissed on the merits.It is so ordered.JUDGE TYLER,DATED: 5/1/74.SEE MEMO-DECISION FOR FULL DETAILS. COPY TO BANKRUPTCY J.GALGAY.
5/10/74	(573)	Filed Trustees' Report and summary of the operation of the business of R.Hoe & Co.Inc.Debtor for March 1974.DATED:4/25/74.COPY TO JUDGE TYLER.

CONTINUED ON PAGE 36

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ORDER TO SHOW CAUSE AND APPLICATION



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization of a Corporation
of	:	
R. HOE & CO., INC.,	:	
Debtor.	:	69 B 461

ORDER TO SHOW CAUSE

Upon the application of John J. Galgay, Trustee of the above-named Debtor, filed the 14th day of July, 1969, and sufficient cause appearing therefor, it is

ORDERED, that the customers of the above-named Debtor who have contracted with said Debtor for the design, manufacture and delivery of printing presses (hereinafter referred to as "press customers"), a list of said press customers appearing on Exhibit A annexed hereto, show cause why it is not in the best interest of the Estate of said Debtor for the Court to direct the said Debtor to devote its principal efforts to the manufacture and delivery of presses to such of the press customers who agree to prepay to the Trustee the balances to become due under their respective

contracts together with certain additional sums as follows:

(a) As to those press customers whose presses are expected to be completed on or before September 8, 1969 (see Exhibit A), all balances to become due under their respective contracts shall be prepaid to the Trustee forthwith and in addition 10% of the total contract price of said presses shall be paid to the Trustee when each such press is ready for delivery.

(b) As to those press customers whose presses are expected to be completed and delivered after September 8, 1969 (see Exhibit A), the amount of prepayment and additional sum to be paid to the Trustee shall be negotiated between said press customers and the Trustee, said amount to be subject to the approval of this Court, with due regard for the rights and interests of the press customers referred to in (a) above and the rights and interests of all other creditors of the Debtor.

(c) All monies to be paid to the Trustee pursuant to (a) and (b) above shall, with the approval of the Court, until the time each press is ready for delivery be deemed to constitute

actual and necessary costs and expenses of preserving the Estate of the Debtor subsequent to the filing of the petition by said Debtor for its reorganization pursuant to Chapter X of the Bankruptcy Act, and it is

FURTHER ORDERED, that a hearing on the issues raised by the application of John J. Galgay, hereinabove referred to, be held on July 17, 1969, at 10:30 o'clock A.M., Room 36, United States Court House, Foley Square, Borough of Manhattan, City and State of New York, and it is

FURTHER ORDERED, that the Trustee give notice by mail of said hearing to each press customer of the Debtor, James Talcott Inc., and to the Securities and Exchange Commission, together with telegraphic notice to each of said persons, calling their attention to the published notice directed to be given herein, and it is

FURTHER ORDERED, that, the Court having found it impracticable to give mail or telegraphic notice to all other interested persons, a copy of this Order (without exhibit) be published not later than July 16, 1969 in the New York Times, Wall Street Journal, and Daily News Record.

Dated: New York, New York
July 14, 1969

Sylvester J. Ryan,
U.S.D.J.

EXHIBIT A TO ORDER TO SHOW CAUSE

PRESS CUSTOMERS OF R. HOE & CO., INC., WHOSE PRESSES ARE DUE TO BE COMPLETED AND DELIVERED ON OR BEFORE SEPTEMBER 8, 1969

SENTINEL-STAR COMPANY
633 North Orange Avenue
Orlando, Florida 32801

CHARLOTTE OBSERVER-NEWS
(Knight Publishing Company)
600 So. Tryon Street
Charlotte, North Carolina 28201

McCLATCHY NEWSPAPERS (Fresno Bee)
1559 Van Ness Avenue
Fresno, California 93721

GEORGE R. HALL, INC.
20234 Detroit Road
Cleveland, Ohio 44116

McCALL CORPORATION
McCall Street
Dayton, Ohio 45401

AMPRESS SALES CORP.
910 East 138th Street
Bronx, New York 10454

(PRESS SUPPLY COMPANY, INC.)
MEDIA SUPPLY CO., INC.
Star Ledger Plaza
Newark, New Jersey 07101

HEARST PUBLICATIONS
SAN ANTONIO LIGHT
P. O. Box 161
San Antonio, Texas 78206

NORWEST PUBLISHING CO.
17401 N.E. Halsey Street
Portland, Oregon 97230

EXHIBIT A TO ORDER TO SHOW CAUSE

PRESS CUSTOMERS OF R. HOE & CO., INC., WHOSE PRESSES ARE DUE TO BE COMPLETED AND DELIVERED AFTER SEPTEMBER 8, 1969

BEN SHULMAN ASSOCIATES, INC.
60 East 42nd Street
New York, N. Y. 10017

LERNER HOME NEWSPAPERS
c/o MYERS PUBLISHING CO.
7519 N. Ashland Avenue
Chicago, Illinois 60626

LONG ISLAND DAILY PRESS PUB. CO. INC.
92-20 168th Street
Jamaica, N. Y. 11433

NATIONAL CAN CORPORATION
5959 So. Cicero Avenue
Chicago, Illinois 60638

S. A. JORNAL DO BRASIL
Rio de Janeiro, Brazil
c/o A. Carneiro & Co., Inc.
152 West 42nd Street
New York, N. Y. 10036

KABLE PRINTING CO.
Mount Morris, Illinois

THE BEACON JOURNAL PUB. CO.
44 East Exchange Street
Akron, Ohio 44309

MARANN INDUSTRIAL CORP.
7 Industrial Road
Woodridge, N. J.

PITTSBURGH METAL LITHO
193 Chartiers Avenue
Crafton, Pittsburgh, Pa. 15205

R. R. DONNELLEY & SONS COMPANY
2223 Martin Luther King Drive
Chicago, Illinois 60616

THE COURIER TIMES
Route #13
Levittown, Pennsylvania 19058

MEDIA SUPPLY INC.
Court St. and University Ave.
Newark, New Jersey 07101

DAYTON NEWSPAPERS, INC.
4th and Ludlow Streets
Dayton, Ohio 45401

AMPRESS, S.A.
Dagens Nyheters AB
Box 138
Stockholm 1, Sweden

NATIONAL PUBLISHING CO.
(Div. of McCall Corp.)
301 "N" Street Northeast
Washington, D. C. 20002

MEREDITH PRINTING
5701 S.W. Park Avenue
Des Moines, Iowa 50305

CONTINENTAL CAN COMPANY, INC.
633 Third Avenue
New York, N.Y. 10017

TRIANGLE PUBLICATIONS, INC.
Gravure Division
400 North Broad Street
Philadelphia, Pennsylvania 19101

NEWSDAY INC.
550 Stewart Avenue
Garden City, L. I.

RICHMOND NEWSPAPERS, INC.
333 East Grace Street
Richmond, Virginia 23213

GOVERNMENT PRTG. OFFICE
14th & "C" Streets
Washington, D. C. 20226

LINDSAY NEWSPAPERS, INC.
(Sarasota Herald-Tribune Journal)
801 S. Tamiami Trail
Sarasota, Florida 33578

CALL-CHRONICLE NEWSPAPERS INC.
Sixth & Linden Streets
Allentown, Pennsylvania 18105

AMPRESS SALES CORP.
910 East 138th Street
Bronx, New York 10454

S. A. "O ESTADO DE SAO PAULO"
Rua Major Quedinho, 28
Sao Paulo, Brazil
(A. M. Carneiro & Co. Inc.)

MORRISTOWN DAILY RECORD, INC.
55 Park Place
Morristown, N. J. 07960

MANSFIELD JOURNAL
Report Court
Dover, Ohio 44622

THE COURIER-NEWS
201 Church Street
Plainfield, N. J. 07061

ANCHOR HOCKING GLASS CORP.
West Main & North Broad Streets
Lancaster, Ohio

JOSE J. L. LOMBARDI E HIJOS
Rio Cuarto 2602
Buenos Aires, Argentina
(A. M. Carneiro & Co.,Inc.)

INLAND NEWSPAPER MACHINERY CORP.
1720 Cherry Street
Kansas City, Missouri 64108

EVENING CALL PUBLISHING CO.
75 Main Street
Woonsocket, R. I. 02895

CLARIN
Buenos Aires, Argentina
(A.M. Carneiro & Co.,Inc.)

GULF PRINTING COMPANY
2210 West Dallas Street
Houston, Texas 77001

RURALIST PRESS INCORPORATED
713 Glenn Street S.W.
Atlanta, Georgia 30310

OKLAHOMA PUB. CO.
500 North Broadway
Oklahoma City, Okla. 73125

MC CALL CORPORATION
McCall Street
Dayton, Ohio 45401

SENTINEL STAR CO.
633 N. Orange Avenue
Orlando, Florida 32801

THE TROY RECORD CO.
Broadway & 5th Avenue
Troy, New York

THE SOUTHAM PRINTING CO.
2973 Weston Road
P. O. Box 570
Weston, Ontario, Canada

HESCO SUPPLY CO., INC.
959 Eighth Avenue
New York, New York 10019

LANCASTER NEWSPAPERS INC.
8 West King Street
Lancaster, Pennsylvania 17604

THE JOURNAL CO.
Journal Square
Milwaukee 1, Wisconsin

AMERICAN CAN CO.
100 Park Avenue
New York, N.Y. 10017

MIRROR NEWSPAPER LTD.
Kippax & Holt Streets
Sydney, Australia

B. W. NORTON MFG. CO., INC.
3100 East Tenth Street
Oakland, California 94601

LA RAZON
Buenos Aires, Argentina
(A.M. Carneiro & Co.)

MEREDITH PRINTING CO.
5701 S. W. Park Avenue
Des Moines, Iowa 50305

BANGOR PUBLISHING CO.
491 Main Street
Bangor, Maine 04401

BOSTON HERALD TRAVELER
300 Harrison Street
Boston, Mass. 02112

CROWN CORK & SEAL CO.
9300 Ashton Road
Philadelphia, Pa. 19136

HERALD PUB. CO.
Herald Square
New Britain, Conn. 06050

EL UNIVERSAL
Principal a Conde No. 12
Caracas, Venezuela
(A.M. Carneiro & Co., Inc.)

SOUTH BAY DAILY BREEZE
5215 Torrance Blvd.
Torrance, Calif. 90503

W. H. HUTCHINSON
1031 N. Cicero Avenue
Chicago, Illinois

THE NEWS TRIBUNE
174 Jefferson Street
Perth Amboy, N. J. 08862

PRESS TELEGRAM
604 Pine Avenue
Long Beach, California 90801

WILLIAMS PRESS INC.
North Broadway
Albany, New York 12201

REVERE COPPER & BRASS CO.
196 Diamond Street
Brooklyn, N. Y. 11222

FRESNO BEE
McCLATCHY NEWSPAPERS
1559 Van Ness Avenue
Fresno, California 93721

ROCK ISLAND ARGUS
1724 Fourth Avenue
Rock Island, Illinois 61201

PHOENIX CLOSURES INC.
2444 West 16th Street
Chicago, Illinois 60608

MERKLE PRESS INC.
810 Rhode Island Avenue N.E.
Washington, D. C. 20018

PRESS PUBLISHING CO.
1900 Atlantic Avenue
Atlantic City, N.J. 08401

Order to Show Cause and Application

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of R. HOE & CO., INC., Debtor.	:	In Proceedings for the Reorganization of a Corporation No. 69B461

APPLICATION FOR ORDER TO SHOW CAUSE

TO: THE HONORABLE SYLVESTER J. RYAN,
DISTRICT JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK:

The application of John J. Galgay, Trustee of R. Hoe & Co., Inc., Debtor, respectfully represents:

1. On July 3, 1969, the Debtor, R. Hoe & Co., Inc., filed a petition in this Court praying that proceedings be had under Chapter X of the Bankruptcy Act and that a Trustee of the Debtor be appointed. A copy of said petition is annexed hereto as Exhibit A.

2. The filing of said petition was approved and applicant was duly appointed Trustee of R. Hoe & Co., Inc. by order of this Court dated July 9, 1969. In accordance with said order, applicant has duly filed his bond with the Clerk of this Court and has entered into possession of the property of Debtor and is now operating its business and managing its property.

3. While it is not possible at the present time to state the precise financial position of the Debtor due to the lack of current and reliable financial information, it is clear that the Debtor is confronted with a cash crisis and an immediate need for several million dollars so as to enable it to continue in operation during the 60-day period fixed by the Court for the investigation and study of the Debtor's financial condition and the feasibility of any plan of reorganization.

4. As appears from the Debtor's petition, the Debtor, as of April 30, 1969, had assets in excess of liabilities in the amount of approximately $21,000,000, with liquid assets, however, of only $510,000. At hearings held in this Court on the question of whether the filing of the Debtor's petition should be approved, it appeared that the figures set forth were estimated and unaudited and that the company's financial position had deteriorated considerably since April 30. At such hearings it was estimated that the liquidation value of the Debtor's assets was less than the amount of its liabilities. On the basis of the Debtor's anticipated receipts and expenditures for the 60-day period following the approval of the filing of the Debtor's petition, the Court estimated that a minimum of $3,000,000 would be required by the Debtor to carry on those activities and operations essential to its being preserved as a viable business entity until the end of such 60-day period.

5. Since entering into possession of the property of the Debtor, applicant has personal knowledge that anticipated receipts of the Debtor were, due to subsequent events over which Debtor had no control, exaggerated. For instance, payment on several checks drawn by Debtor's customers and deposited in Debtor's bank accounts has been stopped. As a result, it was only with great difficulty that sufficient funds were able to be accumulated to meet Debtor's payrolls in the past week. There are at present no funds available to applicant to meet payrolls in the current week and monies to operate the Debtor are needed immediately.

6. Applicant believes that the best interests of the creditors, stockholders, customers and roughly 1,800 highly-skilled employees of the Debtor would be best served by the continuation of its business until such time as its future business prospects can be determined and, if indicated, a plan of reorganization developed. Applicant had conferences on Thursday and Friday of last week with counsel and representatives of customers of the Debtor who have contracted for the design, manufacture and delivery of printing presses over the next several months. For the most part, these customers appear to be willing to come to the Debtor's aid by prepaying balances to become due under their respective contracts and by making additional payments. On Friday, after considerable discussion on both Thursday

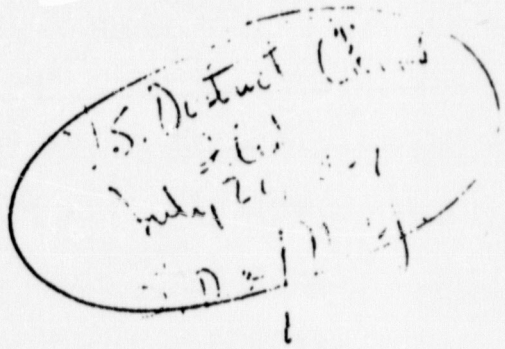
and Friday among the representatives of the various creditors present, and with the applicant, and with the Court, it was suggested that the cash crisis being experienced by the Debtor be met by directing the Debtor to devote its principal energies and efforts to the completion of the manufacture and delivery of printing presses for those of its customers who agree to aid the Debtor by prepaying balances to become due under their respective contracts and making additional payments. This procedure appeared to be acceptable to the majority of the Debtor's customers whose representatives participated in the discussions and it was agreed that notice of the following proposal be made to all of the press and secured creditors of the Debtor and a hearing be had on the matter: Customers whose presses are due to be completed on or before September 8, 1969, shall prepay forthwith all balances to become due under their respective contracts and will pay an additional 10% of the total contract price when each such press is ready for delivery. As to those press customers whose presses are scheduled for completion after September 8, 1969, the amount of prepayment and additional sum to be paid to the applicant shall be the subject of negotiation between the press customers and the applicant, and the amount to be paid will be subject to the approval of the Court, with due regard for the rights and interests of all other customers and creditors of the Debtor. Monies to be advanced to

applicant pursuant to this plan shall, with the approval of the Court, until the time each press is ready for delivery be deemed to constitute costs and expenses of administering the Debtor's Estate and the rights of the customers making such advances shall be governed accordingly.

7. In view of the fact that not all creditors and customers of the Debtor have participated in the discussions held last week, applicant prays that an Order to Show Cause issue to all press and secured creditors of the Debtor so they may be heard as to whether the proposal set forth herein should not be adopted by applicant and approved by the Court.

John J. Galgay, Trustee

ORDER NUMBER 5 DATED JULY 22, 1969



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
-of-	:	69 B 461
R. HOE & CO., INC.,	:	ORDER
Debtor.	:	

The Court having on July 14, 1969 ordered the press customers of the above-named Debtor to show cause why it is not in the best interests of the Estate of said Debtor for the Court to direct the Debtor to devote its principal efforts to the manufacture and delivery of presses to such of said press customers who agree to prepay to John J. Galgay, Trustee of said Debtor, balances to become due under their respective contracts together with certain additional sums in the manner set forth in said order to show cause; and the matter having come on for hearing on July 17, 1969; and various of the interested parties to this proceeding having participated and presented their views at said hearing; and the press customers of the Debtor whose names are set forth in the first ordering paragraph of this order having consented in open court at said hearing to the granting of the relief set forth in

this order; and it appearing to the Court that it is in the best interests of the Estate of the Debtor to order the relief set forth herein; it is

ORDERED, that John J. Galgay, Trustee of the above-named Debtor, is authorized to direct the Debtor to devote its principal efforts to the manufacture and delivery of presses to the following press customers of the Debtor upon the payment to the said Trustee of the amounts set forth opposite the names of said customers under Column A below and to deliver, upon receipt from each press customer of the amount set forth opposite its name in Column B below, the press said press customer has ordered:

Press Customer	A.	B.
SENTINEL STAR COMPANY 633 North Orange Avenue Orlando, Florida	$136,004	$ 90,293
CHARLOTTE OBSERVER-NEWS (Knight Publishing Company) 600 South Tryon Street Charlotte, North Carolina	256,184	170,789
McCLATCHY NEWSPAPERS (Fresno Bee) 1559 Van Ness Avenue Fresno, California	345,000	217,000
McCALL CORPORATION McCall Street Dayton, Ohio	229,665	98,254
PRESS SUPPLY COMPANY, INC. (Media Supply Co., Inc.) Star Ledger Plaza Newark, New Jersey	24,000	16,000

Order Number 5 Dated July 22, 1969

Press Customer	A.	B.
HEARST PUBLICATIONS (San Antonio Light) P.O. Box 161 San Antonio, Texas	206,365	151,281
AMERICAN CAN CO. 100 Park Avenue New York, New York	262,543	26,254
CONTINENTAL CAN COMPANY, INC. 633 Third Avenue New York, New York	$ 97,329	$ 9,732
NATIONAL CAN CORPORATION 5959 South Cicero Avenue Chicago, Illinois	100,995	10,100

and it is further

ORDERED, that the question of whether Hearst Publications contracted to purchase one or two presses and, if the former, shall pay an additional $50,427 to the Trustee, and, if the latter, shall be entitled to a refund of $50,427 from the Trustee, shall be determined by arbitration, the arbitrator to be a qualified engineer selected by Hearst Publications and the Trustee, or in the absence of agreement between them, the arbitrator shall be selected by the Court from lists of three qualified engineers submitted by Hearst Publications and by the Trustee; and it is further

ORDERED, that the Trustee is authorized to commence negotiations with all other press customers of the Debtor to determine the amount of prepayment and additional sum

to be paid to the Trustee by each such press customer, said amount to be subject to the approval of this Court, due regard being had for the rights and interests of all creditors of the Debtor; and it is further

ORDERED, that the payments of each of the amounts set forth in Column A and Column B prepared by the respective press customers identified in the first ordering paragraph of this order shall, until the time the press for which each said payment has been made is ready for delivery with free and clear title constitute actual and necessary costs and expenses of preserving the Estate of the Debtor subsequent to the filing of the petition by said Debtor for its reorganization pursuant to Chapter X of the Bankruptcy Act; and it is further

ORDERED, that John J. Galgay, Trustee of the above-named Debtor, be and he hereby is authorized to issue a non-interest bearing Trustee's Certificate in the form annexed to this order as Exhibit A to each of the press customers identified in the first ordering paragraph of this order in an amount equal to the amount set forth under Column A and Column B prepared opposite the name of each such press customer upon payment to the said Trustee of said amount; and it is further

ORDERED, that each such Trustee's Certificate

shall be returned to said Trustee and in any event shall be null and void and of no effect whatever three days after notice by mail has been sent to the person to whom such Certificate has been issued that the press with respect to which payment was made to said Trustee and such Certificate was issued is ready for delivery.

Dated: New York, New York
July 22, 1969

Sylvester J. Ryan,
U.S.D.J.

ORDER NUMBER 29 APPROVING AGREEMENT BETWEEN TRUSTEE AND PRESS PUBLISHING CO.

U. S. District Court
Filed
Nov. [illegible] 3 1969
S. D. of N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	In Proceedings for the Reorganization of a Corporation
R. HOE & CO., INC.,	:	
Debtor.	:	69 B 461

ORDER NUMBER 29; APPROVING AGREEMENT BETWEEN TRUSTEE AND PRESS PUBLISHING CO.

This Court having on July 22, 1969 authorized the Trustee to commence negotiations with the press customers of the Debtor, R. Hoe & Co., Inc. ("Hoe"), other than those named in that order, to determine the amount of the prepayment and additional sum to be paid to the Trustee by each such press customer, said amount to be subject to approval of the Court and due regard being had for the rights and interests of all the creditors of the Debtor, and Hoe having contracted with Press Publishing Co. ("Press") for the manufacture and sale of a six unit Colormatic press, now on the petition of the Trustee and with the consent of counsel for Press, and upon all the proceedings and

hearings heretofore had by this Court and it appearing that no further hearing need be had or notice otherwise given, and due regard having been had for the rights and interests of all parties, including the creditors, and it appearing to the Court that it is in the best interests of the Estate of the Debtor to order the relief set forth herein, it is

ORDERED, that John J. Galgay, Trustee of the above named Debtor, is authorized to direct the Debtor to devote its principal efforts to the manufacture and delivery of the press ordered by Press with auxiliary equipment upon payment to the Trustee of $423,493; and it is further

ORDERED, that free and clear title to said press and equipment shall vest in Press after notice by mail has been sent to Press that the press is ready for delivery; and it is further

ORDERED, that payment of $342,787 of the amount paid by Press, until the time said press and equipment is ready for delivery with free and clear title, shall constitute actual and necessary costs and expenses of preserving the Estate of the Debtor subsequent to the filing of the petition by said Debtor for its reorganization subject to Chapter X of the Bankruptcy Act; and it is further

ORDERED, that John J. Galgay, Trustee of the above named Debtor, be and he hereby is authorized to issue a non-interest bearing Trustee's Certificate in the form

annexed as Exhibit A to this order in an amount equal to $342,787 upon payment by Press to said Trustee of that amount; and it is further

ORDERED, that the said Trustee's Certificate shall be returned to said Trustee and in any event shall be null and void and of no effect whatever after notice by mail has been sent to Press that said press and equipment, with respect to which payment has been made to said Trustee and the Certificate was issued, is ready for delivery.

Dated: New York, New York
~~October~~ November 3, 1969

S/ Sylvester J. Ryan
Sylvester J. Ryan
U.S.D.J.

The undersigned consents to the entry of the above order.

S/ Wachtell, Lipton, Rosen & Katz
Attorneys for Press Publishing Company

Order Number 29 Approving Agreement Between Trustee and Press Publishing Co.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization
-of-	:	of a Corporation
R. HOE & CO., INC.,	:	69 B 461
Debtor.	:	

TRUSTEE'S CERTIFICATE OF INDEBTEDNESS

THIS IS TO CERTIFY that the undersigned, John J. Galgay, Trustee of R. Hoe & Co., Inc. ("Trustee"), heretofore appointed in the above-captioned proceeding by order of the above Court dated July 9, 1969, is, as such Trustee and not individually, indebted for value received to Press Publishing Co. ("Press") in the amount of Three Hundred Forty-two Thousand, Seven Hundred Eighty-seven Dollars ($342,787), subject, however, to the terms and conditions set forth in this Certificate. This amount is payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public or private debts. This Certificate shall be returned to the said Trustee and in any event shall be null and void and of no effect whatever three days after notice by mail has been sent to Press that the press and equipment with respect

to which payment was made to the said Trustee and such Certificate was issued is ready for delivery.

This Certificate is issued pursuant to an order of this Court dated October , 1969.

This Certificate constitutes an expense of the administration of the above Court of the property of R. Hoe & Co., Inc., and, as such, is payable in due course of administration equally with all other expenses of administration out of such property. This Certificate is one of several certificates of like tenor issued to press customers of the Debtor in accordance with orders of this Court entered on July 22, July 28, October 10, October 29, and October 30, 1969. All extant certificates issued under such orders shall rank equally and none of such certificates shall have priority, one over the other.

This Certificate of Indebtedness is executed by the undersigned, John J. Galgay, not personally, but as Trustee aforesaid, and is payable out of the property of the Debtor. No personal liability shall be asserted or be enforceable against the said Trustee.

IN WITNESS WHEREOF, the undersigned Trustee has hereunto set his hand this day of October, 1969.

_____

As Trustee of R. Hoe & Co.

Order Number 29 Approving Agreement Between Trustee and Press Publishing Co.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matter	:	
of	:	In Proceedings for the Reorganization of a Corporation
R. HOE & CO., INC.,	:	
Debtor.	:	69 B 461

- -x

PETITION FOR AN ORDER APPROVING AGREEMENT BETWEEN THE TRUSTEE AND PRESS PUBLISHING CO.

TO THE HON. SYLVESTER J. RYAN,

DISTRICT JUDGE:

The petition of JOHN J. GALGAY, Trustee herein, respectfully shows and alleges:

1. Heretofore petitioner was duly elected Trustee of the above estate, thereafter qualified by the filing of his bond, and is now acting as such Trustee.

2. By order of the Court dated July 22, 1969, petitioner was authorized to negotiate with the press customers of the Debtor, R. Hoe & Co., Inc. ("Hoe") who had not prepaid the balance due on their presses to determine the amount of prepayment and additional sum to be paid to petitioner by each such press customer, subject to

the approval of the Court and having due regard for the rights and interests of all the creditors of the Debtor.

3. Extensive negotiations have been had with counsel for Press Publishing Co. ("Press") over many weeks during which time counsel for the Trustee has presented to counsel for Press the estimates of cost data upon which the renegotiations have proceeded. Recognition has been had of the fact that while there are common features to the various printing presses manufactured by the Debtor, each is designed to the order of the particular customer and therefore is custom made. As a result of the negotiations referred to above agreement has been reached with Press pursuant to which Press has agreed to prepay $423,493 immediately to the Trustee. That payment includes an increase of $177,028 in the purchase price of the Hoe equipment ordered by Press. With the Court's permission, petitioner will issue to Press a Certificate of Indebtedness in the amount of $342,787. Such Trustee's Certificate shall be null and void after notice by mail has been sent to Press that its press is ready for delivery.

4. Petitioner has agreed to deliver to Press free and clear title to the press upon receipt of the moneys due the petitioner and on notice to Press that its press is ready for delivery.

5. Petitioner believes that the entry of an order

approving the agreement with Press will be in the best interests of the Estate of the Debtor and the rights and interests of all the creditors of the Debtor.

WHEREFORE, petitioner respectfully prays for approval of his agreement with Press, and for such other and further relief as may be just and proper.

Dated: New York, New York
October 31st, 1969.

S/ John J. Galgay
John J. Galgay
Trustee

(Verified)

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PROOF OF CLAIM OF PRESS PUBLISHING CO.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF R. HOE & CO., INC., Debtor	IN THE PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION No. 69 B 461 ADMINISTRATION CLAIM OR, IN THE ALTERNATIVE, CREDITOR'S CLAIM

Donald S. Taylor, of No. 2509 Center Street, Bethlehem, County of Northampton, State of Pennsylvania, says:

1. That he is the President of Abarta Corp. (d/b/a Press Publishing Co.), a corporation organized and existing under the laws of the State of Pennsylvania and carrying on business at No. 210 West Fourth Street in Bethlehem, County of Northampton, State of Pennsylvania and at 1900 Atlantic Avenue, Atlantic City, Atlantic County, State of New Jersey, and is duly authorized to make this proof of claim on its behalf. Said corporation is hereinafter designated as the claimant.

2. That the Trustee of the above named Debtor R. Hoe & Co., Inc., is justly and truly indebted and liable to claimant in the sum of $177,028 or, in the alternative, that the above named Debtor was at the filing by it of its petition for its reorganization, and still is, justly and truly indebted or liable to claimant in the sum of $177,028.

3. That the consideration of this debt or liability is as follows: The said Trustee refused to affirm a contract (a copy of which is annexed hereto) entered into between the claimant and the Debtor prior to the

filing of the petition herein which provided for the purchase by the claimant of a six unit colormatic press. Thereafter, the claimant and the Trustee entered into an agreement, which was embodied in an Order of this Court, whereby the claimant paid the Trustee the sum of $177,028 in excess of the contract price in order to obtain the delivery of the said six unit colormatic press. The payment of said premium over and above the contract price constitutes actual and necessary expenses of preserving the Estate of the Debtor subsequent to the filing of the petition herein. In the alternative, the payment of said premium constitutes damages to the claimant arising from what was in substance the rejection by the Trustee of an executory contract between the Debtor and the claimant.

4. That no part of the debt or liability has been paid.

5. That there are no set-offs or counterclaims to the debt or liability.

6. That claimant does not hold, and has not, nor has any person by claimant's order, or to undersigned's knowledge or belief, for the claimant's use, had or received, any security or securities for the debt or liability.

7. That the instruments upon which the debt or liability is founded are attached hereto.

8. That the Debtor undertook certain obligations and guarantees with respect to the equipment delivered pursuant to the contract annexed hereto, the performance of which is to be made after delivery of the equipment, and that the claimant hereby reserves the right to file a claim

or to amend this claim to cover any damage which may be suffered by it as a result of any breach of such obligations and guarantees.

Dated: Bethlehem, Pennsylvania
January 2, 1970

Donald S. Taylor
President of Abarta Corp.

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Proof of Claim of Press Publishing Co.

POWER OF ATTORNEY

TO: Leonard M. Rosen and William C. Sterling, Jr.

The undersigned, ABARTA CORP. (d/b/a Press Publishing Co.) of 210 West Fourth Street, Bethlehem, County of Northampton, State of Pennsylvania, does hereby authorize you, or any one of you with full power of substitution, to attend all meetings of creditors of the Debtor aforesaid, and all adjournments thereof, at the places and times appointed by the Court, and for the undersigned, and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the Act of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said Debtor and for a committee of creditors, to accept any arrangement or wage-earner's plan proposed by said Debtor in satisfaction of his debts, and to receive payment of dividends, and payment or delivery of money or of other consideration due the undersigned under such arrangement or wage-earner's plan, and for any other purpose in the undersigned's interest whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid.

IN WITNESS WHEREOF, the undersigned has hereunto signed his name and affixed his seal, or caused these presents to be executed by a duly authorized officer, and its seal to be hereunto affixed, the second day of January, 1970.

ABARTA CORP.

By _____
Donald S. Taylor, President

Proof of Claim of Press Publishing Co.

ACKNOWLEDGMENT

STATE OF PENNSYLVANIA:

:SS

COUNTY OF NORTHAMPTON:

On the second day of January, 1970, before me personally came DONALD S. TAYLOR, to me known, who being by me duly sworn, did depose and say that he resides in Bethlehem, Pennsylvania, that he is a duly authorized officer of the corporation on whose behalf he acts, to wit, the President of Abarta Corp. (d/b/a Press Publishing Co.), the corporation described in and which executed the above instrument, that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

B. Mae McCutcheon

Notary Public

B. MAE MCCUTCHEON, NOTARY PUBLIC
BETHLEHEM, NORTHAMPTON COUNTY
MY COMMISSION EXPIRES AUGUST 7, 1973

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Proof of Claim of Press Publishing Co.

State of Pennsylvania,
County of Northampton, } ss.

I, HILDA McFALL, Prothonotary of said County and Clerk of the Court of Common Pleas, in and for said County, do hereby certify, that said Court is a Court of Record. That Brian McCaffrey Esq., whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument, was at the time of taking the same a NOTARY PUBLIC in and for said County and a resident of said County, duly commissioned and sworn, and qualified to act as such; that as such NOTARY PUBLIC he was at the time of taking such acknowledgment duly authorized by the laws of the State of Pennsylvania, to take such acknowledgments and proofs of deeds or conveyances for lands tenements or hereditaments in the State of Pennsylvania, that I am well acquainted with the handwriting of said NOTARY PUBLIC and verily believe that his signature to the same is genuine. No impression of Notary Public seal is requested by laws of this State to be filed in my office.

That his commission is dated January 7 19 67, and will expire January 7, 19 71.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said office at Easton, this 2 day of January A. D. 19 70.

Hilda McFall Prothonotary.

Form 261 1M-12-68 NPCo.

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Proof of Claim of Press Publishing Co.

Hoe Press agree... #836,679

AGREEMENT

The undersigned PRESS PUBLISHING COMPANY, hereinafter called Buyer of 1900 Atlantic Avenue, Atlantic City, New Jersey, and R. HOE & CO., INC., hereinafter called Hoe, of 910 East 138th Street, New York City, County of Bronx, State of New York, in consideration of the following covenants, agree:

1. Hoe hereby sells to Buyer, and Buyer hereby purchases from Hoe on the following terms and conditions, the machinery described in Appendix "A" hereto (hereinafter referred to as the "machinery").

The machinery will be designed and constructed in accordance with the following specification sheets appended hereto and made an integral part hereof:

C-H-U-6 covering the Units;

445-F-32 covering the 3:2 Folder;

500-R-66-1 (Model #560) covering the Fully-Automatic 3-Arm Reel, Automatic Tension and Full-Speed Web Splicing Mechanism.

The machinery shall be arranged substantially as shown on Drawing No. 5852-C dated July 15, 1968, appended hereto and made an integral part hereof.

2. The purchase price of the machinery, based on Hoe making shipments in intact sections, is Eight Hundred Thirty Six Six Hundred Seventy Nine and 00/100 Dollars ($836,679.00) net, f.o.b. railroad cars or trucks at the delivery points specified pursuant to Section 3(a).

The purchase price is firm unless Hoe is prevented from completing manufacture and shipment within the time stipulated due to the circumstances described in Section 4, or by some act or delay on Buyer's part. In such event, the parties hereto will confer and agree upon a revision of the purchase price that will reasonably reflect the changes, if any, in the cost of producing the machinery under those altered circumstances.

The terms of payment, in cash, in New York Clearing House funds, shall be as follows:

10% of the total purchase price to be paid, in cash, upon acceptance of Agreement;

10% of the total purchase price to be paid, in cash, upon the commencement of engineering work;

65% of the total purchase price to be paid, in cash, in monthly installments during the period between the commencement of manufacturing and the estimated time of shipment;

The balance (15%) of the total purchase price to be paid, in cash, when the press is installed and ready for commercial operation.

If manufacture of the machinery is delayed for any reason other than some act or delay on Buyer's part, then payment as hereinabove set forth may be correspondingly delayed.

3. (a) Based on our current workload, the machinery will be scheduled so that shipment can commence about August 1, 1969.

The various components of the machinery shall be delivered to you or your agents at the delivery points specified in Appendix "B" hereto.

(b) When the machinery is ready for shipment, Buyer agrees to accept delivery of the machinery, f.o.b. railroad cars or trucks, at the delivery points specified pursuant to Section 3(a). Transportation charges shall be paid by Buyer and the type of transportation and the routing shall be controlled by Buyer. Shipping materials (such as transportation bedplates, tarpaulins, cables, turnbuckles and miscellaneous equipment) which may be used in shipping the machinery shall remain the property of Koe and Buyer agrees to return such shipping materials to such delivery points by freight collect as soon as possible after receipt thereof.

(c) When the machinery is ready for shipment and shipment is delayed or postponed through any causes beyond the control of Koe, Buyer, or Koe at Buyer's request, shall arrange for storage of the machinery and protection of the machinery against damage from the weather or other causes; and in any such case Buyer shall assume and indemnify Koe against risk of loss or damage to the machinery and shall be responsible for any charges in connection with the storage or reconditioning of the machinery.

4. Koe shall not be liable for loss or damage resulting from delay in performance caused by fires, floods, strikes, labor disputes, labor shortages, inability to secure materials, inability to obtain transportation or delays in transportation resulting from any cause whatsoever, riots, thefts, accidents, acts or failure to act of Government, or any other cause, whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of Koe which may delay or prevent Koe's performance hereunder. In the event of any delay arising by reason of any of the foregoing events, the time for the performance of this Agreement shall be deemed to be extended accordingly.

5. Risk of loss of or damage to the machinery or any part thereof shall pass to Buyer upon the delivery of the machinery or such part thereof to Buyer at the delivery points specified pursuant to Section 3(a).

6. (a) Until the total purchase price for the machinery has been paid in full, Koe shall have, and Buyer hereby grants to Koe, an express lien upon and security interest in the machinery to secure payment of the unpaid balance of such total purchase price. Buyer agrees to execute, upon Koe's request, a financing statement or other appropriate instrument to evidence Koe's security interest in the machinery in the form prescribed by the applicable law governing Koe's lien upon and security interest in the machinery. If Buyer fails to execute such financing statement or other instrument, Koe is hereby authorized by Buyer to execute such financing statement or other instrument and to cause such financing statement or other instrument to be filed or recorded as required without the signature of Buyer.

(b) Until Koe has been paid the total purchase price for the machinery, Buyer shall maintain the machinery in good and operative condition and allow Koe and its agents access to the machinery at all reasonable times; Buyer shall pay, bear and discharge promptly all taxes that may be charged, assessed or imposed upon the machinery or any part thereof; and Buyer shall not remove the machinery from the premises in which it is initially installed or assign, transfer or underlet or part with the possession of the machinery, without the consent in writing of Koe.

(c) Buyer will not permit the machinery or any part thereof to be so affixed to realty as to become a part thereof and will save Hoe harmless from any loss or damage which Hoe may suffer by reason of the machinery or any part thereof being regarded as being affixed to realty. At any time or from time to time, upon Hoe's request, Buyer shall deliver to Hoe a waiver of landlord's or other lien upon the machinery.

(d) If Hoe shall so request, Buyer shall execute and deliver to Hoe any other instrument that Hoe may require to protect its rights and security interest in the machinery hereunder.

7. From the time that risk of loss of and damage to the machinery passes to Buyer as provided above, and until the purchase price for the machinery is paid in full and the obligations of Hoe hereunder have terminated, Buyer shall provide and maintain insurance in the names of Buyer and Hoe as their interests may appear, to the total value of the machinery and of all work performed in the erection thereof against loss or damage by fire (including smoke or water damage resulting from fires), extended coverage, sprinkler leakage, vandalism, and malicious mischief; Buyer shall promptly deliver to Hoe certificates of such insurance; and if Buyer shall fail so to procure and maintain such insurance, or if Buyer shall fail to deliver such certificates, Hoe may insure the machinery as aforesaid at Buyer's expense.

8. (a) At Buyer's request, Hoe will furnish at Hoe's then prevailing rates therefore an experienced man or men to advise Buyer regarding erection procedures for the machinery. Such erection consultants shall act as Hoe's representatives at the site for purposes of reviewing drawings and bills of material and for general coordination of the installation of the machinery compatible with Hoe's shipping schedule.

(b) Buyer shall furnish all erection labor, tools, rigging, cranes, trucks, and facilities required to unload, handle and erect the machinery; and Buyer shall perform all acts necessary and shall assume full responsibility for the proper erection and adjusting of the machinery at the point of installation and shall bear all expenses in connection therewith.

(c) At Buyer's request and expense Hoe shall furnish tools to be used in connection with the erection and adjustment of the machinery. Such tools shall remain the property of Hoe, and Buyer shall return such tools to Hoe by freight collect as soon as possible after termination of their use in connection with the erection and adjustment of the machinery.

(d) No warranty, express or implied shall be derived from the furnishing by Hoe of erection consultant services hereunder. Any defective erection workmanship, whether discovered in the course of erection or subsequent thereto, is to be remedied at the expense of Buyer and/or the erection contractor.

9. (a) Hoe warrants to Buyer that the machinery manufactured by it will be of the kind and quality designated or described in this Agreement and the specification appended hereto and will be free from defects in design, workmanship, or material for a period of twelve (12) months from the time the machinery is ready for shipment. No warranties other than title, whether express or implied, including, without limitations, warranties of merchantability or fitness, not contained in this Section 9 shall be applicable.

(b) The warranties of Hoe with respect to the machinery shall be effective only if the following conditions are satisfied:

(I) The machinery is erected, operated, tested, maintained and protected from damaging agents by Buyer in accordance with generally approved practices and in accordance with all reasonable operating and maintenance procedures and conditions of service which may be at any time specified by Hoe.

(II) Buyer has provided, and maintains, those services, equipment and materials for use with the machinery specified by Hoe, including services, equipment and materials supplied by others which affect the operation of the machinery.

(III) Hoe shall have the right to examine and reproduce records applicable to the operation and maintenance of the machinery; and Buyer shall secure and preserve, for Hoe's examination, appropriate records of operation and maintenance of the machinery adequate to enable the parties to properly ascertain their rights and duties under this Section 9.

(IV) Written notice of the claimed defect must be given to Hoe within thirty (30) calendar days from the date the defect is detected by Buyer.

(c) The sole obligation of Hoe under this Section 9, and the exclusive remedy of Buyer, with respect to the machinery, shall be as follows:

(I) Hoe shall repair, or at its option, replace f.o.b. Hoe's works, any part of the machinery which shall fail to conform to the warranties set forth in subsection (a) of this Section 9. Any repaired part and any replacement part delivered by Hoe under the provisions of this subsection (c) shall be further warranted for a time period equal to the unexpired term of the warranty applicable to the original part.

(II) If Hoe cannot repair or replace such part within a reasonable time after written notice of such defect is received by Hoe, or if any emergency exists rendering it impossible or impracticable for Buyer to call upon Hoe to repair or replace such part, Buyer may make or cause to be made such repair or replacement. Hoe will reimburse Buyer for the reasonable cost of such parts repaired or replaced.

(III) The liability of Hoe arising out of manufacture, sale, furnishing, or erection of the machinery, or its use, whether on warranties or otherwise, shall be limited to the cost of repair or replacement of parts which fail to conform to the warranties set forth in subsection (a) of this Section 9. Anything in this Agreement to the contrary notwithstanding, Hoe shall not be responsible for installation labor or for the suitability or performance of materials, equipment or parts furnished or repairs made or work done by others, or for any loss or expenses arising from such installation labor, materials, equipment, parts, repairs or work unless the work is specifically ordered by Hoe.

10. Buyer shall indemnify Hoe and save Hoe harmless from any and all liability for injury to persons (other than Hoe's own employees) and injury to or loss of property which may result from any cause whatsoever after the machinery is delivered to Buyer at the points of delivery pursuant to Section 3(a).

11. Hoe shall not be liable in any event for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation of the machinery or any other equipment, or for any special or consequential loss or damage of any nature arising from any cause whatsoever.

12. (a) Where the laws or ordinances or rules and regulations of the United States, or a state, a political subdivision of a state, or an agency or a corporate or other instrumentality of one or more of the foregoing, require installation permits or the approval of plans and specifications for the installation of the machinery, or permits or licenses for the use thereof, Buyer shall assume the responsibility for securing such permits and the approval of such plans or specifications from the proper authority and for paying any of the required fees. Hoe will advise and assist Buyer in obtaining the necessary licenses and approvals insofar as they relate to the machinery.

(b) Hoe will equip the machinery with guards and safety appliances required by the laws of the State of New York. If any variations from such requirements are required by any applicable local laws, Hoe at Buyer's request will equip the machinery in accordance with such laws, provided Buyer gives Hoe specifications for such variations prior to the commencement of the engineering of the machinery. In such event, it is understood that Hoe will add the additional price, if any, of such variations to the total purchase price to be paid by Buyer.

13. The prices provided for in this Agreement are exclusive of any present or future Federal, State, Municipal or other sales or use tax with respect to the machinery of any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof or by the gross value of the machinery, and of any present or future property tax or similar charge with respect to the machinery. If Hoe is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction, or the machinery covered hereby, then such amount of tax shall be added to the purchase price to be paid by Buyer hereunder.

14. (a) Should Hoe be sued for patent infringement on equipment not included in the machinery but which may be used by Buyer in conjunction with the machinery, then Buyer agrees to indemnify Hoe and save Hoe harmless from any liability for judgements that may arise from such suits, and to bear all litigation costs in connection therewith.

(b) Should Buyer be sued for patent infringement in connection with the machinery, then Hoe agrees to indemnify and save Buyer harmless from any and all liability for judgements that may arise from such suits and to bear all litigation costs in connection therewith; and it is agreed that Hoe's liability in connection with such claims for patent infringement is limited to the direct costs of litigation and any judgement that may arise therefrom.

(c) In any such action referred to in (a) or (b) above, the indemnifying party shall have the right to appoint counsel of its own choice and to defend or settle any such action as it may in its own judgement deem advisable.

15. Hoe has provided herewith or shall provide Buyer with general arrangement drawings showing the machinery with reference to foundations, including loading diagrams. Hoe shall not be responsible for the depth of the footings, size or accuracy of the foundations or the character of the materials selected for their construction. Hoe also shall not be responsible for any damage, or repairs necessary to the machinery, caused by or resulting from defects in the foundations.

16. Any controversy or claim (except any claim for damages for bodily injury including death at any time resulting therefrom, sustained by any person or persons, and except any claim for damages because of injuries to or destruction of property) arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and the judgement upon the award rendered by the Arbitrators may be entered in any court having jurisdiction thereof.

17. (a) There are no understandings between the parties hereto as to the subject matter of this Agreement other than as herein set forth. All previous communications between the parties hereto either verbal or written are hereby abrogated and withdrawn; and this Agreement with the specifications and drawings specifically referred to herein constitutes the whole Agreement between the parties hereto.

(b) This Agreement cannot be assigned nor may the terms and conditions be modified except by a duly approved Agreement signed by both parties. Any provisions of a purchase order or a specification which may be issued after this Agreement has been accepted by Buyer and which are additional to or in conflict with the provisions of this Agreement shall not be binding on Box unless duly approved in writing by both parties to this Agreement.

In witness whereof the parties have caused this Agreement to be executed this 1st day of November, 19[illegible].

PRESS PUBLISHING COMPANY

Witness: B. Mac McCafferty

Witness: Estelle M. Sondz (seal)

by: Donald Sawyer

Title: President

Attest: James U. Sawyer

Secretary/Asst. Secretary

R. HOE & CO., INC.

Witness: Dorothy Kingsley (seal)

Witness: Daniel Sawyer

by: [illegible]

Title: Vice-President

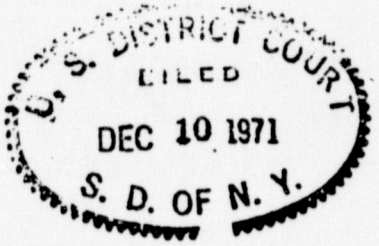
Attest: [illegible]

Secretary/Asst. Secretary

ORDER NUMBER 29 APPROVING AGREEMENT BETWEEN TRUSTEE AND PRESS PUBLISHING CO., AND ANNEXED PAPERS

Identical to Order Number 29 printed herein at pages A32 to A39.

ORDER NUMBER 117 APPOINTING SPECIAL MASTER TO HEAR AND REPORT ON OBJECTIONS TO PROOFS OF CLAIM



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization
-of-	:	of a Corporation
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	

ORDER NUMBER 117 : APPOINTING SPECIAL MASTER TO HEAR AND REPORT ON OBJECTIONS TO PROOFS OF CLAIM

Upon the annexed petition of John J. Galgay, Trustee of the above-named Debtor dated the 7th day of December, 1971 requesting this Court to appoint a Special Master to hear and determine objections to proofs of claim filed in these proceedings pursuant to this Court's order of October 22, 1969, and upon all the prior proceedings in this matter and it appearing that no hearing need be had or notice otherwise given, it is

ORDERED, that Honorable Harold J. Raby, United States Magistrate for the Southern District of New York is hereby appointed as a Special Master in these proceedings to hear and report to this Court on objections by the Trustee herein to proofs of claim filed in these proceedings; and it is further

ORDERED, that said objections shall be noticed for hearing before the Special Master during the week of December 27,

1971 in Courtroom 2804, United States Court House, Foley Square, New York, New York; and it is further

ORDERED, that the Trustee may retain the services of the Southern District Court Reporters to record the proceedings before the Special Master and that the expenses so incurred shall be an administrative expense in these proceedings; and it is further

ORDERED, that fourteen (14) days' notice be given to creditors of the objections by said Trustee and that creditors who intend to contest the objections by said Trustee shall give notice of such intention and any documents in support of their position to counsel for the Trustee seven (7) days before the scheduled hearing date.

Dated: New York, New York
December [illegible], 1971

s/ Sylvester J. Ryan

Sylvester J. Ryan
U.S.D.J.

Order Number 117 Appointing Special Master to Hear and Report on Objections to Proofs of Claim

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization
-of-	:	of a Corporation
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	

PETITION FOR AN ORDER APPOINTING A SPECIAL MASTER TO HEAR AND REPORT ON OBJECTIONS TO PROOFS OF CLAIM

TO: THE HONORABLE SYLVESTER J. RYAN,
DISTRICT JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of JOHN J. GALGAY, Trustee of R. Hoe & Co., Inc., the Debtor, respectfully represents:

1. By order of this Court dated July 9, 1969, petitioner was appointed Trustee of R. Hoe & Co., Inc. ("Hoe"), the above-named Debtor and thereafter duly qualified. By order of this Court dated October 22, 1969, proofs of claim were required to be filed in this matter by January 6, 1970. This petition is in support of an order directing that objections to proofs of claim be noticed for hearing before a Special Master to hear and report to this Court.

2. My counsel working in cooperation with the Debtor's employees have prepared objections to certain of the proofs of

claim filed in these proceedings and are prepared to bring those objections on for hearing and a report to this Court. I am informed that Honorable Herbert Loewenthal, one of the Bankruptcy Referees of this Court to whom other matters in these proceedings have been referred is ill and will not be available to hear such objections in the immediate future. Because the attorney in my counsel's firm who is most familiar with these matters is scheduled to take one year's leave of absence from my counsel's firm beginning on January 20, 1972, it is in the best interests of the Estate that these objections be noticed for hearing before that time. In view of these special circumstances, it appears appropriate to refer these objections to a Special Master who is not a bankruptcy referee and who will be available to hear the objections.' I am informed that United States Magistrate Harold J. Raby will be available during the week of December 27, 1971 to hear those objections. I would like to give notice to the creditors to whom objections have been or will be interposed to bring those objections on for hearing before Magistrate Raby during that week. My counsel has discussed this matter with Magistrate Raby who has requested that the order appointing him also provide for the presence of a court reporter from the Southern District Court Reporters. I am informed that Courtroom 2804 in the United States Court House will be available during that week.

3. In order to make the best use of the Magistrate's time, the proposed order requires those creditors to whom objec-

tions are interposed to notify my counsel if they do not acquiesce in the objections one week prior to the scheduled hearings on the objections.

WHEREFORE, it is respectfully requested that this Court appoint United States Magistrate Harold J. Raby as a Special Master in these proceedings to hear and report to this Court on objections to proofs of claim in accordance with the provisions of the proposed order.

Dated: New York, New York
December [illegible], 1971

S/ John J Galgay

John J. Galgay
Trustee of R. Hoe & Co., Inc.

NOTICE OF HEARING OF OBJECTION TO THE ALLOWANCE OF THE CLAIM FILED BY PRESS PUBLISHING CO.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	No. 69 B 461
-of-	:	In Proceedings for the Reorganization of a Corporation
R. HOE & CO., INC.,	:	NOTICE OF HEARING
Debtor.	:	

S I R S :

PLEASE TAKE NOTICE that the objection of John J. Galgay, Trustee of R. Hoe & Co., Inc., the above-named Debtor, filed the 9th day of December, 1971, to the allowance of the claim filed herein by Press Publishing Company will be brought on pursuant to an order of the United States District Court for the Southern District of New York dated December 10, 1971 before Honorable Harold J. Raby, United States Magistrate, in Room 2804, United States Court House, Foley Square, City and State of New York, on the 30th day of December, 1971, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at which hearing evidence will be taken of the said objection and the undersigned will move this Court to disallow said claim.

If you do not acquiesce in the objection to your claim accompanying this notice, and intend to appear at the hearing hereinabove provided for, you are directed by order of the United States District Court for the Southern District of

Notice of Hearing of Objection to the Allowance of the Claim Filed by Press Publishing Co.

New York dated December 10, 1971 to give notice of said intention and to file such documents as you may wish the Magistrate to consider in such hearing with Winthrop, Stimson, Putnam & Roberts, attention William Silver, Esq., on or before December 20, 1971.

Dated: New York, New York
December 10, 1971

WINTHROP, STIMSON, PUTNAM & ROBERTS

By _____
Attorneys for John J. Galgay
Trustee
40 Wall Street
New York, New York

TO:
Press Publishing Company
(Abarta Corp.)
1900 Atlantic Avenue
Atlantic City, N. J.

Wachtell, Lipton, Rosen & Katz
230 Park Avenue
New York, N.Y. 10017

A 60

OBJECTION TO CLAIM OF PRESS PUBLISHING CO.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization of a
-of-	:	Corporation
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	OBJECTION TO CLAIM

JOHN J. GALGAY, as Trustee of R. Hoe & Co., Inc., the above-named Debtor, objects to the allowance of the claim of Press Publishing Company, heretofore filed herein, upon the following grounds:

1. The Debtor is not justly indebted to the claimant in the amount of One Hundred Seventy-Seven Thousand Twenty-Eight Dollars ($177,028.00).

2. Pursuant to Order No. 29 of this Court entered November 3, 1969, the Trustee was authorized to direct the Debtor to devote its principal efforts to the manufacture and delivery of certain press equipment theretofore ordered by claimant as distinguished from press equipment ordered by other customers of the Debtor. In consideration for this priority, claimant agreed to renegotiate its contract with the Debtor and to pay a premium of One Hundred Seventy-Seven Thousand Twenty-Eight Dollars ($177,028.00) on the original contract price. Since claimant received full consideration for the sum advanced

by it and the resultant novation of the original contract was specifically agreed to by claimant, claimant is not entitled to recover the claimed amount.

WHEREFORE, John J. Galgay. said Trustee, prays that the claim of Press Publishing Company, heretofore filed herein, be disallowed with costs.

JOHN J. GALGAY,
Trustee

WINTHROP, STIMSON, PUTNAM & ROBERTS

By C. Edward Brashot

A Member of the Firm
Attorneys for Trustee
40 Wall Street
New York, New York 10005
(212) WH 3-0700

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NOTICE OF NON-ACQUIESENCE AND INTENTION TO APPEAR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter -of- R. HOE & CO., INC., Debtor.	In Proceedings for the Reorganization of a Corporation 69 B 461 NOTICE OF NON-ACQUIESCENCE and INTENTION TO APPEAR

S I R S:

PLEASE TAKE NOTICE that claimant Abarta Corp. (d/b/a Press Publishing Co.) does not acquiesce in the trustee's objection to its claim and intends to appear in opposition to such objection at the hearing provided for in the notice of hearing dated December 10, 1971.

Dated: New York, New York
December 20, 1971

WACHTELL, LIPTON, ROSEN & KATZ

By _____
A Member of the Firm

Attorneys for Claimant
Abarta Corp. (d/b/a Press
Publishing Co.)
Office and P.O. Address
230 Park Avenue
New York, New York 10017
Tel. No. 889-4300

TO: WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for Trustee
Office and P.O. Address
40 Wall Street
New York, New York

RELEVANT EXCERPTS FROM REPORT OF UNITED STATES MAGISTRATE SITTING AS SPECIAL MASTER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	69 B 461
of	:	PROCEEDINGS FOR THE RECLASSIFICATION OF A CONVICTION
R. HOE & CO., INC.,	:	REPORT OF UNITED STATES MAGISTRATE AS SPECIAL MASTER
Debtor.	:	

By order of this Court (per the Hon. Sylvester J. Ryan, U.S.D.J.) dated and filed December 10, 1971, the undersigned was appointed as Special Master to hear and report to this Court on objections by the trustee herein to various proofs of claim heretofore filed in this proceeding. The order further provided that the said objections be noticed for hearing before the undersigned as Special Master during the week of December 27, 1971. It was also provided in the order that fourteen (14) days notice be given to the creditors of the objections by the trustee and that creditors who intended to contest the objections should give notice of such intention at least seven (7) days before the scheduled hearing date.

In pursuance of the above mentioned order, the trustee prepared four separate notices of hearing, each said notice being dated December 10, 1971. For the convenience of the Court, a copy of each of said notices of hearing are appended hereto, in bound form being marked as "Court Exhibit #1."

Relevant Excerpts From Report of United States Magistrate Sitting as Special Master

The first of the aforementioned notices of hearing, returnable December 28, 1971 at 10:00 A.M. deals with a particular group of claimants (hereinafter referred to as "Group 1") as to whose claims the trustee objects on the ground that the claims were filed too late, that is to say, subsequent to the date fixed by the bar order of this Court fixed for the filing of claims, to wit January 8, 1970.

The second notice of hearing, also returnable on December 28, 1971 at 10:00 A.M., deals with a separate group of claimants (hereinafter referred to as "Group 2") where objection is made to the claims on their merits (in some instances the trustee here also objects to the claims on grounds of untimeliness).

The third notice of hearing, returnable on December 29, 1971 at 10:00 A.M. also deals with a group of claims of various claimants and opposes said claims particularly on the merits.

The fourth and last notice of hearing, returnable December 30, 1971 at 10:00 A.M. deals with a large and complicated claim of a single claimant, to wit, Press Publishing Company, also known and referred to in this proceeding as Abarta Corp. d/b/a Press Publishing Co.

Hearings as to each of the above mentioned separate groups of claims were held by me on the days scheduled therefor. In each case, the hearing was preceded by a calendar

call to determine whether any claimant who had not previously indicated his or its intention to contest the trustee's objections, wished to do so; and my report will indicate in

each instance whether the respective claimants appeared in the proceeding or defaulted in so doing.

A complete stenographic record of the proceedings was obtained by the trustee and the original copy thereof is transmitted to the Court with this report.

Upon due consideration of the evidence adduced in the aforementioned hearings, and upon due consideration of the contents of the respective claims and the respective objections thereto, my proposed disposition concerning each of the claims is set forth below. My report will be subdivided into the above mentioned four separate groups of cases. In each case where the objections have been sustained in whole or in part, my report will indicate my recommendation as to the imposition of costs against the unsuccessful or partially successful claimant, the trustee having specifically requested that costs be imposed against such unsuccessful claimants, subject to the discretion of the Court. I assume that to the extent that Judge Ryan approves my recommendations with respect to the imposition of costs, the trustee will, at the conclusion of this phase of the proceedings, present to the District Court

for its approval an appropriate bill of costs as against each claimant who is held to be subject to the imposition of costs.

GROUP ONE CASES
(Late claims heard on 12/28/71)

General Comment:

By Order #25 in this proceeding, Judge Ryan set the

For reasons fully stated in the testimony of Mr. John Roach, transcript pages 218-223, it appears to me that this claim is improper in its entirety, and it is my recommendation that it be disallowed, with costs imposed against the claimant.

GROUP FOUR CASES
(Case involving the claim of Abarta Corp d/b/a Press Publishing Co.)
Claim for $177,028.00

This very substantial claim was called for hearing before me at 10:00 A.M. on December 30, 1971. The claimant appeared by the law firm of Wachtell, Lipton, Rosen & Katz, Esqs., Theodora Gewertz, Esq., of counsel, the trustee being represented by Mr. Silver of the firm of Winthrop, Stimson, Putnam & Roberts. As the transcript of the proceedings on this claim (Transcript pages 224 through 261 A) indicates, the issue presented by this claim constitutes one of law, there being no factual problems that needed to be resolved by the taking of any testimony.

The importance of this claim lies, not only in the intrinsically substantial amount of the claim itself, but also in the fact that this claim constitutes a "test case", upon the ultimate determination of which will depend the propriety of a number of substantial claims of similar nature.

Basically, the claim in question is a claim based upon the difference between the amount that the claimant contracted to pay for equipment ordered from the debtor and the

amount the claimant was ultimately required to pay in order to secure the equipment, namely, $177,028.00.

The trustee offered no evidence in contradiction of the allegation by the claimant that it was subjected to the incurrence of excess costs in the amount just indicated. Consequently, if it is determined that the claim is legally proper under the circumstances, it must be allowed in full.

In paragraph "2" of the objections to the claim it is alleged as follows:

> "2. Pursuant to Order No. 29 of this Court entered November 3, 1969, the Trustee was authorized to direct the Debtor to devote its principal efforts to the manufacture and delivery of certain press equipment theretofore ordered by claimant as distinguished from press equipment ordered by other customers of the Debtor. In consideration for this priority, claimant agreed to renegotiate its contract with the Debtor and to pay a premium of One Hundred Seventy-Seven Thousand Twenty-

> Eight Dollars ($177,[illegible].00) on the original contract price. Since claimant received full consideration for the sum advanced by it and the resultant novation of the original contract was specifically agreed to by claimant, claimant is not entitled to recover the claimed amount."

If in fact the claimant had "renegotiated" its contract, as above alleged in the objections, it seems quite clear that the objections to the claim would have to be sustained, either on the theory propounded by the trustee that parties have a right to renegotiate their contracts, or on the alternative theory that there was a "novation" in which the trustee assumed the obligations of the debtor in consideration of a discharge by claimant of the obligations owed to it by the debtor.

The claimant, however, vigorously challenged the trustee's version of what occurred in court. The claimant's version, which appears to be accurately stated at pages 2 through 12 of its memorandum of law in support of its claim, is that the claimant, while agreeing to the arrangement under which it would make certain prepayments and pay additional money for the delivery of the presses by the trustee, fully reserved its right to file a proof of claim for the difference between the contract price and its actual costs, either on theory of breach of contract or on the alternative theory that

the excess amount paid constituted an administration expense, as to which claimant would have priority.

From the colloquy between counsel for the various claimants whose position was identical to that of this claimant (as quoted in claimant's memorandum), it seems quite clear to me that, contrary to the position of the trustee, the claimants did not agree to relinquish their right to file a claim against the debtor for breach of its original contract.

Whether claimants would have done so if the trustee had insisted is irrelevant; for the plain fact is that the trustee (quite possibly because he had no alternative course) entered into the arrangements which he did with this claimant and other claimants similarly situated without first having obtained from those claimants an express written waiver of their right to file claims. The record makes it clear, on the contrary, that the trustee entered into the arrangements which he did with this claimant and others similarly situated with the full knowledge that this claimant did not regard the transaction either as a novation or as a substituted contract.

I have, in connection with my consideration of this case, been substantially aided by excellent briefs submitted by the respective parties, including the initial memorandum

of the claimant, the trustee's answering memorandum, a reply memorandum of claimant, and a sur-reply memorandum of the trustee. These memoranda are transmitted herewith.

After careful consideration of the contents of the above mentioned memoranda, and for the reasons hereinabove stated, it is my recommendation that the claim of Abarca Corp. d/b/a Press Publishing Co. be allowed in its full amount, but only as an unsecured general creditor.

New York, N. Y.
March 13, 1972.

Respectfully submitted,

HAROLD J. RAU
United States Magistrate
(Sitting as Special Master)

* * * * * *

I list below, and, unless herein contrarily indicated, transmit herewith, the following papers considered by me in connection with my disposition of this matter:

1. Copy of order of this Court dated December 10, 1971, appointing the undersigned as Special Master to hear and report on various objections to various proofs of claim heretofore filed.

2. Original notice of hearing on objections, returnable December 28, 1971 at 10:00 A.M., filed December 13, 1971.

3. Second notice of hearing on objections, returnable December 28, 1971 at 10:00 A.M., filed December 13, 1971.

4. Third notice of hearing, returnable December 29, 1971 at 10:00 A.M., filed December 13, 1971.

5. Fourth notice of hearing, returnable December 30, 1971, filed December 13, 1971.

6. Transcript of testimony, pages 1 through 261 A.

7. Trustee's exhibits, as follows:

   1. Original objections filed by trustee (these are presently in the possession of the trustee).

   2. Original proof of claim by Stobb, Inc.

   3. Letter dated February 11, 1971 from Stobb, Inc.

   4. Letter dated June 29, 1967 from Stobb, Inc.

   5. Original purchase order issued to Stobb, Inc. and letter received from Stobb, Inc. dated January 5, 1967.

   7. Proof of claim of Abarta Corp. (This exhibit should have been numbered "6", there being no Exhibit 6 in this proceeding).

8. Stobb, Inc. Exhibit A (letter dated February 21, 1969).

9. Court exhibits as follows:

   1. Copies of notices of hearing, etc.

   2. Mangold affidavit (T. page 4).

   3. Loinwand affidavit (T. page 5).

   4. Foldoor affidavit (T. page 6).

Relevant Excerpts From Report of United States Magistrate Sitting as Special Master

5. Lopez' affidavit (T. page 7).

6. Richards' affidavit (T. page 7).

7-A. Bonucchi affidavit (T. page 8).
7-B. Burns' letter (T. page 8).

8. Letter from Beaver Heat Corporation.

9. Correspondance re: Lamont Goar Co. (T. page 27).

10. Briefs of counsel; re: Abarta Corp.

11. Brief of trustee, re: Taxation of costs.

HAROLD J. RADY
United States Magistrate

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NOTICE OF FILING OF SPECIAL MASTER'S REPORT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	69 B 461
of	:	IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION
R. HOE & CO., INC.,	:	NOTICE OF FILING OF SPECIAL MASTER'S REPORT
Debtor.	:	

To The Below Named Addressees:

PLEASE TAKE NOTICE, pursuant to Rule 53 (e)(1) F.R.C.P. and Rule 6-F of the Civil Rules of this Court, that the undersigned has this day filed his report as Special Master in the above entitled proceeding, at the office of the Clerk, United States District Court for the Southern District of New York, where said report is available for your examination.

Dated: New York, N. Y.
March 13, 1972.

HAROLD J. RABY
United States Magistrate
(Sitting as Special Master)

(See ensuing pages for list of addressees)

Notice of Filing of Special Master's Report

TO THE BELOW INDICATED ADDRESSEES:

GROUP ONE	Report Page and Proposed Disposition
Abex Corporation 530 Fifth Avenue New York, N. Y. 10036	(4) Allowed ($3,635.80)
Admiral Merchants Motor Freight, Inc. 2625 Territorial Road St. Paul, Minnesota 55114	(8) Disallowed
American Specialty Supply Co. 160 East 25th Street New York, N. Y. 10010	(9) Disallowed
Atlas Pattern & Model Works 179 Morgan Avenue Brooklyn, N. Y.	(5) Allowed ($1,428.00)
Beaver Heat Treating Corp. 887 S.E. Moore Street Portland, Oregon	(9) Allowed ($5,209.33)
I. Burack, Inc. 550 Saw Mill River Road Yonkers, New York	(6) Allowed ($458.00)
City Paper Company 3700 First Avenue N. Birmingham, Alabama 35201 Alfred L. Shiels, Esq. 501 Fifth Avenue New York, N. Y. 10017	(6) Allowed ($767.71)
Fisher Tool and Transmission Corporation 43-40 34th Street Long Island City, N. Y.	(9) Disallowed
General Corrugated Products Co. 23-01 Borden Avenue Long Island City, N. Y.	(10) Disallowed
Gerwig & Gerwig 1324 Chicago Avenue Evanston, Illinois 60201	(10) Disallowed

	Report Page and Proposed Disposition
Gisholt Machine Company Division of Giddings & Lewis Inc. P. O. Box 147 Milwaukee, Wisconsin 53201	(10) Disallowed
Kohner, Mann & Kailas 4484 North Oakland Avenue Milwaukee, Wisconsin 53211	
Hewitt-Robbins Division of Litton Industries 114 Kensington Avenue P. O. Box 15 Buffalo, N. Y. 14240	(10, 11) Allowed ($584.65)
Hydro-Pneumatics, Inc. 20 Lumber Road Roslyn, Long Island 11576	(7) Allowed ($6,930.25)
Ingersoll Milling Machine Co. 707 Fulton Avenue Rockford, Illinois 61101	(11) Disallowed
Interpatent Via Caboto 35 Turin, Italy	(11) Disallowed
Krucker's Restaurant & Grove, Inc. Route 1, Box 69 Pomona, New York	(11) Disallowed
Salvatore T. Gambino, Esq. 1006 Brown Street Peekskill, N. Y. 10566	
Lee Spring Co. (Division Unimax Switch Corp.) 30 Main Street Brooklyn, N. Y. 11201	(11, 12) Disallowed
Gerhard Liedl Patentanwalt Steinsdorfstrasse 8 Munich 22 Germany	(12) Disallowed

	Report Page and Proposed Disposition
Luce Press Clippings, Inc. 13 North MacDonald Street Mesa, Arizona	(12) Disallowed
Melville Shoe Corporation 25 West 43rd Street New York, N. Y. 10036	(7) Allowed ($10,263.12)
Morrison Steel Co. 475 Jersey Avenue New Brunswick, N. J. 08903 Arutt, Nachamie, Benjamin & Rubin 11 West 42nd Street New York, N. Y. 10036	(12) Disallowed
Neal & Brinker Co. Assignee: Conrad B. Duberstein, Esq. Otterbourg, Steindler, Houston & Rosen, P.C. 230 Park Avenue New York, N. Y. 10017	(12, 13) Disallowed
Northwest Tube & Metal Fabricators 2658 S.E. Tenino Street Portland, Oregon 97202	(13) Allowed ($177.00)
Philadelphia Steel & Iron Corp. Washington & Walnut Streets Conshohocken, Pennsylvania 19428	(6) Allowed ($3,905.75)
Potter-Webster Co. 130 S.E. 7th Avenue Portland, Oregon 97214	(13) Disallowed
Roller Bearing Company of America Sullivan Way (P.O.Box 38) West Trenton, New Jersey James A. Waldron, Esq. Backes and Backes 28 West State Street Trenton, New Jersey 08608	(13) Allowed ($2,241.97)

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
Seaboard Industrial Supply Corp. 151 North 3rd Street Philadelphia, Pennsylvania 19106 Steinberg, Greenstein, Richmann & Price 818 Widener Building 1339 Chestnut Street Philadelphia, Pennsylvania 19107	(14) Disallowed
Service Transportation Co. 250 State Highway No. 3 Secaucus, New Jersey 07094 Harber & Freeman 422 Thirty-Eighth Street Union City, New Jersey 07087	(14) Disallowed
Superior Carbon Products 9115 George Avenue Cleveland, Ohio Messrs. Calfee, Halter, Calfee, Griswold & Sommer 1800 Central National Bank Building Cleveland, Ohio 44114	(14) Allowed ($5,900.05)
Taft Contracting Co. 1125-1131 W. Adams Street Chicago, Illinois 60607	(8) Allowed ($1,693.25)
Traffic Dynamics 1841 E. Eliz. Avenue Linden, New Jersey	(14, 15) Disallowed
United-Buckingham Freight Lines, Inc. P. O. Box 192 Littleton, Colorado 80120	(15) Allowed ($84.51)
United Chromium Corporation 3521-23 N. 2nd Street Philadelphia, Pennsylvania Morgan, Lewis & Bockius, Esqs. 123 South Broad Street Philadelphia, Pennsylvania 19199	(15) Disallowed

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
United Parcel Service 643 W. 43rd Street New York, New York	(6) Allowed ($235.58)
Williamson Adhesives, Inc. 8220 Kimball Avenue Skokie, Illinois 60076	(15, 16) Disallowed
GROUP TWO	
Alabama Oxygen Co., Inc. P. O. Box 1108 Birmingham, Alabama 35201	(16) Allowed to extent of $10.24 , less costs
Sirote, Permutt, Friend & Friedman First Federal Building First Avenue at 21st Street, North Birmingham, Alabama 35203	
American Express Co. 65 Broadway New York, N. Y. 10006	(17) Allowed to extent of $555.83, less costs
Thomas J. O'Connor, Esq. 770 Broadway New York, N. Y. 10003	
American Saw & Tool Company Division of Vermont American Corporation 500 E. Main Street Louisville, Kentucky 40402	(17) Allowed to extent of $8,079.34
Hamilton, Hopson & Hamilton Suite 614, 310 West Liberty Street Louisville, Kentucky 40202	
Borden Inc. 350 Madison Avenue New York, N. Y. 10017	(18) Adjourned sine die .
Eastern Freight Ways, Inc. Eastern & Moonachie Avenues Carlstadt, N. J. 07072	(18) Disallowed

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
Eastern Gear Division of G. W. Murphy Industries 52 Garfield Avenue Paterson, New Jersey 07522	(18) Allowed to extent of $8,352.00
Elliott Company Division of Carrier Corp. 1809 Sheridan Avenue Springfield, Ohio 45501	(18) Allowed to extent of $66.13, less costs
Gerrard Steelbinder 2007 S.E. Grand Avenue Portland, Oregon 97214	(19) Allowed to extent of $116.77
Great Bear Spring Company 51 Madison Avenue New York, N. Y. 10010	(19) Allowed to extent of $7.16
Hanchett Manufacturing Co. 906 North State Street Big Rapids, Michigan 49307	(19) Allowed to extent of $7,641.63
Maislin Transport Limited 7401 Newman Boulevard La Salle, Quebec, Canada	(19, 20) Allowed to extent of $619.50, less costs
Metal Improvement Company 180 Main Street Hackensack, N. J. 07601	(20) Disallowed, with costs
Milwaukee Gear Company 5150 N. Port Washington Road Milwaukee, Wisconsin 53217	(20) Allowed to extent of $1,523.16, less costs
Modern Hard Chrome Service Co. 1416 S. Sixth Street Camden, N. J. 08104	(20, 21) Allowed to extent of $5,517.00, less costs
Red Star Express Lines of Auburn, Inc. 24-25 Wright Avenue Auburn, N. Y. 13021	(20) Allowed to extent of $40.81, less costs

John P. Doyle, Jr., Esq.
P. O. Box 9
Auburn, N. Y. 13021

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
REA Express 1815 Egbert Avenue San Francisco, California 94124	(21) DISallowed, ~~to extent of $21.80, less costs~~
Riccardo's Restaurant 21-01 24th Avenue Astoria, Queens, N. Y. 11102	(21, 22) Allowed to extent of $250.80, less costs
Viclon Precision Co. 4454 Bronx Boulevard Bronx, N. Y. 10470 Schneider & Lichtenstein 124 East 40th Street New York, N. Y. 10016	(22) DISallowed, ~~to extent of $4575.00, less costs~~
Xerox Corporation Credit Department 018 Xerox Square Rochester, N. Y. 14603	(22,23) Claim #1 allowed to extent of $15,366.93 Claim #2 disallowed Claim #3 disallowed

GROUP THREE

Agfa-Gevaert, Inc. 275 North Street Teterboro, N. J. 07608	(24) Allowed to extent o $9,896.94
All-Boro Systems, Inc. 230 Park Avenue New York, N. Y. 10017 Otterbourgh, Steindler, Houston & Rosen, P.c. 230 Park Avenue New York, N. Y. 10017	(24) Allowed to extent o $1,482.65, less cost
Braun Gear Company 239 Richmond Street Brooklyn, New York 11208	(24) Adjourned sine die
Corona Bearings & Transmission Corp. 2964 Lafayette Avenue Bronx, N. Y. 10465	(25) Allowed to extent o $2,295.08

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
Dallas & Mavis Forwarding Co. 4000 W. Sample Street South Bend, Indiana 46621	(25) Allowed ($299.14)
Formsprag Company 23601 Hoover Road Warren, Michigan Leo H. Raines, Esq. 521 Fifth Avenue New York, N. Y. 10017	(25) Allowed ($16,229.83)
Harry Grodsky & Company, Inc. 784 Bay Street Springfield, Maasachusetts 01109 Benjamin D. Novak, Esq. 1387 Main Street Springfield, Massachusetts 01103	(25, 26) Disallowed
Heppenstall Company Hatfield Street Pittsburgh, Pennsylvania 15201	(26) Allowed to extent of $13,510.65, less costs
Kreitz Motor Express, Inc. 717 Tulpehocken Street Reading, Pennsylvania 19603	(26) Allowed to extent of $189.60
Lamont Gear Co. 4600 North Fairhill Avenue Philadelphia, Pennsylvania 19140 Russell W. Whitman, Esq. Dechert, Price & Rhoads 1600 Three Penn Center Philadelphia, Pennsylvania 19102	(27, 28) Allowed to extent of $15,388.34
Logansport Machine Co, Foot of West Linden Avenue Logansport, Indiana 46947	(28) Allowed to extent of $6,145.70
Messi ger Bearings, Inc. P. O. Box 7256 Philadelphia, Pennsylvania 19101	(28, 29) Allowed to extent of $13,140.00

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
Stobb, Inc. Box 5205 Clinton, New Jersey 08809 Hauck & McIntyre, Esqs. 39 Main Street Clinton, New Jersey 08809	(29, 30, 31) Allowed to extent of $20,107.12
Stranahan Gear Co. 3010 Franks Road Huntingdon Valley, Pennsylvania 19006 Drinker, Biddle & Reath 1100 Philadelphia National Bank Building Broad and Chestnut Streets Philadelphia, Pennsylvania 19107	(31) Disallowed
Superior Electric Co. 383 Middle Street Bristol, Connecticut Shipman & Goodwin, Esqs. 799 Main Street Hartford, Connecticut 06103	(31) Adjourned sine die
Wichita Clutch Co. 307 Barwise Street Wichita Falls, Texas 76307	(31) Allowed to extent of $7,427.15
Zimmer Machine Co. Fox Chase Road Gladstone, New Jersey 07934 Buchdahl, Lempel, Galland & Kaftal 276 Fifth Avenue New York, N. Y. 10001	(31, 32) Disallowed, with costs

Notice of Filing of Special Master's Report

	Report Page and Proposed Disposition
GROUP FOUR	
Press Publishing Company (Abarta Corp.) 1900 Atlantic Avenue Atlantic City, New Jersey	(32) Allowed ($177,028.00)

Wachtell, Lipton, Rosen & Katz
230 Park Avenue
New York, N. Y. 10017

Winthrop, Stimson, Putnam & Roberts, Esqs.
Attorneys for Trustee
40 Wall Street
New York, N. Y. 10005

NOTICE OF MOTION TO CONFIRM REPORT OF SPECIAL MASTER AND TO DISMISS CERTAIN CLAIMS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization
-of-	:	of a Corporation
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	

NOTICE OF MOTION TO CONFIRM REPORT OF SPECIAL MASTER AND TO DISMISS CERTAIN CLAIMS

S I R S :

PLEASE TAKE NOTICE that the undersigned will move before the Honorable Sylvester J. Ryan, United States District Judge for the Southern District of New York at 10:30 o'clock in the forenoon of April 4, 1972 in Room 1106, United States Court House, Foley Square, New York, New York or as soon thereafter as counsel may be heard for an order confirming in part and rejecting in part the report dated March 13, 1972 of United States Magistrate Harold J. Raby sitting as a Special Master in these proceedings pursuant to the Court's order of December 10, 1971, and dismissing the claims of the claimants listed below on the ground that said claimants received the press equipment purchased by them and that the additional payments they agreed to pay constituted a modification of their contracts with the Debtor, or in the alternative, a novation which was satisfied, all of which

is more fully set forth in the memorandum annexed hereto and the memoranda presented to Magistrate Raby in connection with the Trustee's objection to the proof of claim filed by Abarta Corp. (D/B/A Press Publishing Co.). The claims to which this motion is directed are those filed by:

Abarta Corp. (D/B/A Press Publishing Co.)

Call Chronicle Newspapers, Inc.

Continental Can Company, Inc.

The Knight Publishing Company

McCall Corporation

McClatchy Newspapers

Wm. H. Hutchinson & Son, Inc.

Dated: New York, New York
March 27, 1972

WINTHROP, STIMSON, PUTNAM & ROBERTS

By_____
A Member of the Firm
Attorneys for John J. Galgay, Trustee
40 Wall Street
New York, New York 10005

TO:

WACHTELL, LIPTON, ROSEN & KATZ
230 Park Avenue
New York, New York 10017
Attorneys for Abarta Corp. (D/B/A Press Publishing Co.) and Call Chronicle Newspapers, Inc.

WILLKIE FARR & GALLAGHER
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for Continental Can Company, Inc.

BROUSE, McDOWELL, MAY & BIERCE
500 First National Tower
Akron, Ohio 44308
Attorneys for The Knight Publishing Company

MARSHALL, BRATTER, GREENE, ALLISON & TUCKER
430 Park Avenue
New York, New York 10022
Attorneys for McCall Corporation

SHEA GALLOP CLIMENKO & GOULD
330 Madison Avenue
New York, New York 10017
Attorneys for McClatchy Newspapers

GOLDMAN, FRIER & ALTESMAN
Seven Dey Street
New York, New York 10007
Attorneys for Wm. H. Hutchinson & Son, Inc.

RECORD RE TRUSTEE'S OBJECTION TO PROOF OF CLAIM FILED BY ABARTA CORP. (D/B/A PRESS PUBLISHING CO.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization of a Corporation
-of-	:	
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	

INDEX TO RECORD RE TRUSTEE'S OBJECTION TO PROOF OF CLAIM FILED BY ABARTA CORP. (d/b/a PRESS PUBLISHING CO.)

1. Proof of Claim dated January 2, 1970, containing:

   (a) copy of contract between the Debtor and Press Publishing dated November 1, 1968;

   (b) copy of Order Number 29 entered November 3, 1969 approving agreement between Trustee and Press Publishing Co.

2. Excerpts from transcripts of prior proceedings.

3. Copy of Order to Show Cause dated July 14, 1969.

4. Copy of Order Number 5 dated July 22, 1969.

5. Schedule of Payments by Abarta Corp. (d/b/a Press Publishing Co.) to the Debtor and the Trustee.

6. Stipulation of Historical Facts.

7. Statement of Parties.

1. PROOF OF CLAIM DATED JANUARY 2, 1970, CONTAINING:

   (a) COPY OF CONTRACT BETWEEN THE DEBTOR AND PPE PUBLISHING DATED NOVEMBER 1, 1968;

   (b) COPY OF ORDER NUMBER 29 ENTERED NOVEMBER 3, 1969 APPROVING AGREEMENT BETWEEN TRUSTEE AND PRESS PUBLISHING CO.

Identical to Proof of Claim printed herein at pages A40 to A52.

2. EXCERPTS FROM TRANSCRIPTS OF PRIOR PROCEEDINGS

EXCERPTS FROM TRANSCRIPT

Date	Page(s)	Reference
July 17, 1969	95-96	Abarta Memo (M. Raby) pp. 4,5,31 " " (J. Ryan) p. 5
"	101-02	Abarta Memo (M. Raby) pp. 4,31 " " (J. Ryan) p. 5
"	107-08	" " (M. Raby) p. 31
"	112	" " (M. Raby) p. 14
"	113	" " (") pp. 5,6 " " (J. Ryan) p. 5
"	123	" " (M. Raby) p. 7 " " (J. Ryan) p. 6
"	124	" " (") pp. 6,7 Abarta Reply Memo (M. Raby) p. 8 " " " (J. Ryan) p. 6
"	126	" " " (M. Raby) p. 31
"	127-28	New
"	132-35	"
"	144-45	Abarta Memo (M. Raby) p. 7
"	151-53	" " (") p. 7 Trustee's Reply Memo (M. Raby) p. 2 (153 only), pp. 13,14 Abarta Memo (J. Ryan) p. 6
"	154	Abarta Memo (M. Raby) pp. 3,31 " " (J. Ryan) p. 6 " " (M. Raby) p. 31
"	169	" " (") p. 8
"	193-4	New
"	240	"
"	261-63	Abarta Memo (M. Raby) p. 31
"	272	" " (") p. 14

2. Excerpts From Transcripts of Prior Proceedings

Date	Page(s)	Reference
July 22, 1969	451	Abarta Memo (M. Ryan) p. 8 Trustee's Reply Memo (M. Raby) p.3 Abarta Reply Memo (M. Raby) p. 18 Trustee's Memo (J. Ryan) p. Abarta Memo (J. Ryan) p. 7
July 22, 1969	461	Abarta Memo (J. Ryan) p. 7
"	462-63	" " (M. Raby) p. 11 Trustee's Reply Memo p. 2 Abarta Memo (J. Ryan) p. 7
"	469-71	New
September 8, 1969	559	Abarta Memo (J. Ryan) p. 9
October 8, 1969	45-49	New
November 29, 1969	11-13	New
December 30, 1971	231-35	Abarta Memo (J. Ryan) p. 17

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ago the trustee and his counsel have engaged in virtually countless conferences and discussions directed to saving this company.

In all of those hearings and conferences there has been the uniform expression that the best interest of allparties concerned with this proceeding would be served by preserving this company as a going concern.

In none of these hearings and conferences has a single voice been raised to say that the situation here merits the liquidation for all and for that matter any part of the company's business.

Yet, as your Honor knows full well and as most of the gentlemen in this courtroom recognize the company faces an acute cash crisis.

What is sought by this hearing in essence is to generate enough cash to continue the operations of the company in the immediate future so as to provide the trustee and his counsel at least some opportunity to explore with potential purchasers and others the possibility of a fair, equitable and feasible plan of reorganization for the company.

In this connection I think it is fair

to say that a lively interest has been indicated in this company and the possibility of arranging for the acquisition of its businesses.

But we are faced with an emergency situation which calls for emergency procedures.

The question -- the primary question before the Court is whether the press customers who are here assembled and particularly those press customers whose presses are expected to be delivered before September 8th are prepared to come forward in the manner indicated in the order to show cause. The number of counsel for the press customers have been in touch with me. Your Honor, there are special circumstances which may apply in their particular cases and they may want to present those special circumstances to you this morning.

I would urge each of the gentlemen to keep in mind that unless all of the press customers, particularly the press customers whose presses are scheduled for delivery before September 8th are prepared to take a statesman like position in this matter, the interest of none of them will be served.

Now when this matter was last discussed in informal hearings in this courtroom, your Honor,

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to pursue the investigation into the affairs of this company and into its management which may well have to be made.

My immediate problem was meeting the payroll which became due two or three days after the petition was filed.

After a number of conferences with Talcott & Company who are factors and who have banked this company for some five or six months, I think, since last April, April '69, we got together enough money to meet last week's payroll.

We had the union representatives down and they have indicated a willingness to cooperate with us because if they don't I don't know where we are going to be, but the union and the men and the officers who are now there have been cooperating with the trustee and with the Court to try and keep this plant going and have the work continue.

So the first problem that we have is getting the money to meet the payroll.

Now, the only way that we can get the money is to go to the people whom I feel will receive the greatest benefit, the greatest immediate benefit for the continuation of the plants' operations

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and that is the press purchasers, the people who have contracts for presses, many of whom have paid substantial amounts on account of the contracts and purchasers who need their presses.

I do want to point out to you that the Court has a duty not only to these press purchasers or press customers but the Court is required to function impartially to see that all interested parties have their rights protected and considered.

Now the interested parties here would be not only the purchasers, it would be not only the laborers who work, who have an interest in the pension fund where I understand there are considerable payments in arrears, the government that has taxes unpaid coming to it, the stockholders who bought stock which I am told in January of this year was selling for about $57 a share and was sold a few days before the petition was filed for $13 a share and I don't know what that stock is worth today.

I would have to be a magician to find out what it is worth. We have to have a substantial audit made.

But in any event my position was

1sj-1 107

And with that background I tried to analyze this situation. I came to the conclusion that the press purchasers had of necessity to be divided into two groups, those whose machines or presses could be completed within 60 days and those who would take longer than 60 days to complete.

I picked out the 60 days or September 8th because the law requires that although I approve this petition for filing and saved this company from being adjudicated a bankrupt and put it in the posture where its business could be continued and perhaps the company can be reorganized, I am required to hold a notice of a meeting within not less than 30 days -- not within 30 days, not sooner than 30 days, nor more than 60 days after the approval of the petition, and I have set the date for the approval, what we call the final approval of this petition, which has to be on notice to all interested parties to September 8th.

My immediate problem to keep this business going and to get the money to keep it going and to have some initial investigation made

2sj 198

by a competent accountant which will put me and put the creditors in the position of knowing what the situation is, at least in respect to cash at hand, the status of the company financially and the cost of completing the uncompleted and undelivered purchase contracts.

Now that is the reason September 8th was picked out.

Now I feel that with reference to the contracts that can be completed by September 8th, that constituting one group and one which requires immediate attention, we should have something set afoot which will permit us, after negotiations with those purchasers, to continue this business to meet the payroll, to meet the current expenses, finish these machines and keep on working on the other machines.

A number of meetings were held. I spoke and I appeared and discussed this matter with a number of attorneys, some of them I see sitting at this table.

The last meeting was held, I think, on Thursday or Friday of last week, which I was present at, and at that meeting it was decided

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was done on the machine.

I want to have these contracts each analyzed from the cost point of view by the accountants.

I am not here to hold up anybody with a gun at their head and say I need more money.

I say after that is done it would be my purpose and the trustee's purpose and the trustee's attorneys' purpose to sit down with you and present management to show you what we have and to enter into some kind of a renegotiation with you which would supply the money to complete these machines, and not give you a preference by completing them and make delivery at a cost over and above the completion cost when we haven't got the money even to complete them.

I also told the attorneys for these purchasers where deliveries to be made after September 8th that they could send up any competent man from their organization and see just how far these machines have progressed in work and what it takes to finish these machines and complete them.

We would also make available to you

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any cost studies which were made on these machines as to their present condition either by current management or by these outside accountants -- Leidesdorf -- who I hope I can hire for you; that would be made available to you.

Now that in a nutshell is the story; either you want these machines or you don't want them.

If you want the machines we have to have the money to complete them; we have to have the money to keep the plant going.

I have this else to say to you:

I do not intend, if it is in any way possible that I can avoid it, to adjudicate this company or to dismiss this petition so it might be adjudicated a bankrupt in some other proceeding.

If it is adjudicated a bankrupt I don't know where you would be with your machines or where the receiver would get and where he would get the money to complete the jobs and keep the place operating.

Apparently, according to what I am told -- I don't know whether it is so or not --

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in which I intend to submit a counter-proposal to what the trustee has submitted in this order to show cause.

The five companies whom I speak for are prepared to advance the sums of money in total all called for by the order to show cause, that is, they are prepared to pay the full balance due under their contracts, although they are not obligated to do so by the contracts, although they are not obligated by the contracts to pay for some period of time after delivery.

They are, nonetheless, prepared to pay immediately, your Honor, deliver checks for the full balance.

In addition, they are prepared to issue checks in the amount of ten per cent of the contract price, not, however, as an increase in the cost of the machinery but as a loan to the trustee in return for trustee certificates.

THE COURT: That was discussed and it cannot be received under that condition:

No. 1, I want to point something out to you, that your creditors or your clients would have a claim against the estate as a general

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creditor for any additional amount they paid for their machines over and above the contract price.

That is No. 1.

No. 2: I do not intend that we make any profit on this but I don't know how we are going to work out and renegotiate these matters on these uncompleted machines which can be delivered by September 8th other than the way we have enumerated that here.

If your clients don't want these machines, don't take them, don't make the payment. It is as simple as that.

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THE COURT: You bargained with a debtor who has difficulty paying its bills and who is now in reorganization.

MR. ROBSON: We are prepared to help that debtor by lending money.

THE COURT: You are also prepared to help yourself. You want these machines and I want to see you get them. Now, what we had agreed to is this: That if you do not get your delivery of the machine that you put up the balance of the purchase price and 10 percent, then the difference that you put up now will be charged as an administration expense and that is the best I can do for you.

MR. ROBSON: I am not sure I follow that.

THE COURT: Well, then, talk to somebody who will explain it to you. I can't at this stage. If you have an administration expense you are preferred over many, many creditors. You would be an administration creditor.

MR. ROBSON: Would you excuse me just a moment?

THE COURT: No, I can't. I will hear

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somebody else and I will hear you again.

MR. GOULD: My name is Milton S. Gould of Shea, Gallop, Climenko & Gould. I represent Triangle Publications and MacLatchey newspapers.

Your Honor, you see, I would be delighted with Mr. Robson's so-called counter proposal. It is a great idea but it is an idea which doesn't take into account the elemental problem with which all of us tried to deal on Thursday and Friday and that is that you can't expect those equipment purchasers whose machines, although partly paid for or in the drawing board stage to sit by quietly while more of their money, as they see it, is used to finish the machines that can be completed by September 8th, and so, as your Honor knows, what we did when we came up with this 10 per cent idea or some variation -- I am delighted with any equitable variation -- was to try to help the so-called group 2 equipment purchasers, the fellows who are going to have to wait six, seven, eight months to get their machines, the concept that their money is being used to finish the machines in group 1.

I can speak without equivocation

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because I have people on both sides of that problem who are here. So that alone, while it is far more desirable from the point of view of the client that I represent who is in group 1, that is prior to September 8th, may not be acceptable to the people in group 2 and without their cooperation we can't do this thing.

So it is this attempt of what I will call loosely, equity, that results in the concept of paying something more than the contract -- the balance due on the contract.

THE COURT: This gentleman?

MR. FAIRGRIEVE: My name is William Fairgrieve of the firm of Fairgrieve, Sibbet & Craig representing GeorgeR. Hall, Inc.

I was quite surprised for Mr. Robson, speaking for us, because I know of no authority for that.

The situation is as far as we are concerned we feel that we should be excluded from this group for the simple reason that we are installers -- small installers and erectors and during the course of the transfer of a piece of equipment from Miami to Charlotte, some of the equipment was

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here today. I am happy to hear from you.

MR. FREED: My name is Clarence Freed with the firm of Hawkins, Delafield & Wood and appearing for an Australian corporation. The only point I want to raise at this time is because of the short notice I was retained last night and spoke to the client in Australia. It is impossible for them to make a decision or to make a payment.

THE COURT: Which group are you in?

MR. FREED: There are machines prior to September 8, 1969 ready for delivery.

THE COURT: That is in the first list?

MR. FREED: That is right. There are special circumstances here, your Honor, because of the fact that the contracts cannot be --

THE COURT: Excuse me, I don't see your company listed in that first list.

MR. FREED: It is under Ampress Sales Corporation.

THE COURT: That is yours?

MR. FREED: The contract was made with Ampress, your Honor.

Ampress, is not in bankruptcy --

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as we understand it.

THE COURT: I don't know who Ampress is.

MR. FREED: Ampress is a subsidiary, as I understand it, of the bankrupt.

MR. WESELY: A wholly owned subsidiary, your Honor, of Hoe.

THE COURT: This is a new one. I learn something every day here.

MR. FREED: It is a new wrinkle. That is one question which I -- one of the questions which are part of the special circumstances here, but principally it is because no contract which was made and approved by the Australian Foreign Exchange can be changed without, again, getting approval of the Australian Exchange.

Subsequently, with the subsidiary corporation his contracts overlap and whether there is any effect by reason of the bankrupt are all questions which must be pursued and I say it is therefore unreasonable to ask for a time so that, one, we can determine whether we can amend the contract, two, whether we desire to amend the contract and three, whether we would be willing to make any

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additional payment.

THE COURT: Mr. Freed, I can understand your problem but I know you can understand the problem the trustee has and the Court has. I would like to continue this business and work on these machines. I can't do it unless I get the money.

MR. FREED: I understand that.

THE COURT: It is my purpose if a sufficient number of these customers listed in this schedule A, whose orders can be completed for the delivery on or before September 8th consent to this agreement and I raise enough money to keep this plan going, we will complete those who have consented to this agreement. Those who do not we will take no action on it and nothing will be done to complete your machines.

MR. FREED: I want to make it clear.

THE COURT: Nothing will be done. You won't stop anything except work on your own machines, period.

MR. FREED: All I want is the opportunity and I don't want to be foreclosed --

THE COURT: If we get enough money from those who consent we will go ahead with the work.

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If we don't the plant will have to be closed down. The operations will be closed down and I don't know when the presses will be completed.

It is just as simple as that.

MR. FRED: I just ask for the opportunity not to be foreclosed.

THE COURT: You are not going to be foreclosed because if I approve, suppose, for instance out of this group, as I remember there are nine listed here whose machines can be delivered on or before September 8th, if a sufficient number -- is it nine, Mr. Polglase?

If a sufficient number of these with a sufficient amount of payment is available so that we can run this plant we will work on those who have paid and we will enter the order with reference to them.

If your client can't consent at this time he will not be included in this order and no work will be done and no delivery would be made to your client.

If you want to be included in later you will have to make a special application to the Court.

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Mr. Schneider's comment the last time. I think your Honor, the breach of contracts which would result and increase the unsecured creditors to the extent that each one of these present purchasers would have a claim for breach of contract would be so tremendous in comparison with what benefit they are going to arrive at that equity requires a solution of this nature.

THE COURT: You want to say something?

MR. LUTZ: I am Richard Luts of the firm of Townley, Updike, Carter & Rodgers and we represent Sentinal Star Company of Orlando, Florida.

Mr. Robson was speaking on behalf of four or five of the group 1 people and essentially it is the position of that group that we want to give the company all the cooperation we can and all the money the Court has been asking for.

THE COURT: Not the Court. I am asking for enough to operate the company. The creditors --

MR.LUTZ: The only distinction that is being made here is to --

THE COURT: You won't let me finish but you go ahead, I will let you finish.

MR. LUTZ: I am sorry.

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THE COURT: You go ahead. You have a greater right to talk than I. You talk on the record. You make your record, counsel.

MR. LUTZ: I am sorry, your Honor. I would rather --

THE COURT: You make your record. I have nothing to ask you.

MR. LUTZ: Your Honor, the only point I was making is we would like to make the money available to the Court as provided in the first portion of the order to show cause with the single difference instead of 10 per cent being treated as an adjustment of the purchase price it be treated as a loan not repayable until some period of time until after a plan of reorganization can be worked out, the same amount of funds would be available to continue the operation of R. Hoe & Company in the future and no significant and immediate obligations, but I think it is somewhat more palatable to the companies who are being asked to pay additional funds if they have some better prospect of some day seeing a hope of recovering these funds if it is treated as a loan.

I think that is the point that we are

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MR. WESELY: Two other can companies, your Honor, American Can and National Can.

THE COURT: This is a new venture which was started by Hoe, as I understand it, which concerns the application of an imprint on some substance of a canning process and it is a new idea and a new concept, this type of work which may develop into quite a field by some enterprising management who takes over this operation.

MR. WESELY: Your Honor, each of these three companies received the order to show cause and telegraphic notice and the like.

It is entirely right they belong on the first part of Schedule A, the pre-September group.

THE COURT: Continental Can, American Can and National Can. I will add those on to the first part of Exhibit A annexed to the order to show cause.

Yes, sir?

MR. HOLBEN: Your Honor, I am Joseph Holben with the firm of Broune, McDowell, May & Pierce. We are representing the Charlotte Observer News and Knight Publishing Company.

I would like to ask for a point of

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information on a matter the Court indicated earlier it didn't care to comment relative to how the 10 per cent would be treated.

As I understand it prior to delivery the 10 per cent extra payment will be treated as an administration expense?

THE COURT: No, I say to you the 10 per cent would be regarded as an administration expense for the protection of the purchaser and in the event you made this payment and you did not deliver it, the moneys that you paid over which would include the balance of the purchase price and your 10 per cent would be properly regarded by the Court as an administration expense.

What is the form of security that I will give you.

MR. HOLDEN: Until delivery?

THE COURT: Until delivery. If delivery is made you would not get any refund whatsoever.

MR. HOLDEN: If delivery is made did I understand the Court to say that it would treat the claims as a general unsecured claim?

THE COURT: No, I said that

even though you had made this payment of an extra 10 per cent, that would not be considered a waiver on the part of any purchaser of his right to claim this additional 10 per cent payment as an item of damage in the performance of the contract and file a claim in the event as he so selects as a general creditor for that amount.

MR. HOLBEN: Would that be as a --

THE COURT: I don't want to be a lawyer for you today.

MR. WESELY: Your Honor, there may be some confusion with respect to how the 10 per cent is to be treated. When the matter was discussed -- last discussed on Friday and as appears in the order to show cause, the 10 per cent was not -- it was at that time thought that the 10 per cent not be paid until such time as the presses were ready for delivery.

THE COURT: You can't run it that way.

MR. WESELY: So then the proposal has been made by the gentleman here on different terms to be sure to make the 10 per cent payment prior to the date of delivery, indeed, forthwith at the time they make the payment of the balance to be -- the balance

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owing on the contracts.

Under those circumstances it would seem that where there is -- where there are moneys paid to the trustee that those will be treated, I think as it was fairly stated, that those will be treated as administration expenses in the event that the customer did not receive his presses expected.

However, upon receipt of the press there would be no administration claim, no trustee obligation of any sort.

THE COURT: Except that they would have a right to file and claim as a general creditor for alleged breach of contract.

But what I want to point out to you will be, that this money will be used to keep the plant in operation. Now a part of it will be used while work is done on another machine.

We can't set this up in 12 separate accounts and if we work on machine A, we will take that money and that cost on that machine from a fund. These funds are going to be mingled, they are going to be put in one general pot and they are going to be used by the trustee and by

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MR. SABIN: May I add this to the record?

THE COURT: Let me see if I can get those figures correct. The contract is $160,000.

How much is the balance due?

MR. SABIN: About $24,000.

THE COURT: I will put on $24,000 and the 10 per cent would be $16,000, right?

MR. SABIN: May I add this, your Honor? The contract involved the purchase of two casing machines, one of which has been fully delivered.

May we ask you to give consideration to the application of the 10 per cent to that portion --

THE COURT: I told you that I couldn't differentiate these contracts. You remember that and I can't.

MR. SABIN: The answer is yes.

THE COURT: All I can tell you is this, if there is a reorganization here and you come in as a general creditor you might get some refund if you file a claim for damages for failure to complete the contract.

All right, that was Press Supply.

The next is Hearst Publications.

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Let's see where we are here.

MR. WESELY: Your Honor, I don't know whether it would make a difference but one company was overlooked in the roster and that was McCall Corporation.

MR. ROBSON: I prefer not to be insulted by the fact your Honor overlooked me.

THE COURT: I didn't overlook you. You come from my county, the great county of the Bronx, I have known you for many years. Even though I don't agree with you as a Judge I do agree with you oftentimes as an individual.

MR. ROBSON: Fortunately there have been cases where we did agree.

THE COURT: Don't let me find you at fault.

MR. ROBSON: I would like to make a brief statement reiterating for the record what I stated earlier: Namely, that it is the opinion of my client and myself that it would be more equitable for us to pay the balance and to lend the additional sum in view of the fact we are prepared to accept delivery of our press immediately without preferring any further work be done on it, recognizing however

the exigencies of the situation and seeing no alternative to it, we will participate.

THE COURT: I don't like these left handed consents. I am not twisting anybody's arm and I am not forcing you to do anything you don't want to do and I don't want it afterwards said -- here is a letter. Better get American Can. They are willing to pay the ten per cent over and go along with the other customers.

MR. WESELY: That is National Can.

THE COURT: This is American Can, all right.

Either you consent or you don't consent and I don't care what you do, but I don't want it to appear on the record that you are doing this under any form of what is known in many of the western states as economic duress or judicious duress, because that can be asserted as a defense in many, many states.

I have sat in courts in the far west and that is the law. I have not sat in your state in Ohio, counsellor, but I sat in Denver, Washington, Spokane. That is is one way I used to spend my vacation, I got $16 a day for traveling expenses, took my wife with me, I would spend my 30-day vacation and I held court in Spokane, Tacoma,

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your question?

MR. ROSEN: I would like management to just state there are no other sources that they have accounted for. Is that so?

THE COURT: I have been trying to find it out and Mr. Polglase says no. Are there any other sources of income other than collections on accounts receivable?

MR. POLGLASE: I think we have covered everything. Any other source of income?

MR. GRASSO: No.

THE COURT: I can't hear you, sir.

MR. GRASSO: No, sir, we have covered all the sources of income.

THE COUNT: The only source of income is what, collection on accounts receivable?

MR. GRASSO: Collection on accounts receivable, yes, sir.

MR. JOHNSON: My name is Tom Johnson. I would like to address a question to the trustee.

On this projection of expenses, I understand that was made as of July 3rd. Is there any possibility of scaling that down?

THE COURT: That projection was not made

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your Honor.

THE COURT: If you don't want to go along with it you have the right to take an appeal.

MR. FELDMAN: Oh, no, you're misunderstanding me, your Honor, I have been in favor of this plan right along, but I am not in favor, nor do I think that Mr. Gould is in favor of having Mr. Robson's client walk out with his press, pay his 10 per cent and walk away and we still don't know that we are going to get down beyond another two weeks of operation. And that's our point. They're taking our assets, we paid a lot of money up front and they use their money to build his press and others.

MR. WEINSTINE: They used our money to build their presses also.

THE COURT: If you keep on with this position you will either have an appeal upstairs or you will have a reorganization with the plant closed down.

MR. WESELY: Your Honor, let me try and pull this together. We have based on what has thus far been given today perhaps enough to operate for another four weeks. It had been

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the hope and probably an essential way with which this company is going to be saved is perhaps have some other company come in and support the operation which results in the group 2 people getting their presses. That, it seems, is really the way they're going to get their presses.

Now, in order to do that, before you can really get underway with any potential purchaser or acquirer or a company that wants to merge with Hoe, they have to have some kind of finances upon which to rely. That is what we felt that it is essential to look forward to a 60-day turn around time in order to get the accounts in, to get reasonable finances upon which we can rely which would be the sort of thing that a potential purchaser would want.

Now, to carry this company through the turn-around period, it seems to me it is then necessary to look beyond at how we are going to get beyond August 7 or August 15.

The answer to that question, it seems to me, goes back essentially to Triangle Merkle and the other big group 2 customers. Are they prepared to come in, accelerate payments on

essentially the same terms as the group 1 people have done this afternoon? With this additional benefit to them: That because of the fact, because of the fact that their presses are not scheduled for delivery until sometime later on in the fall or the winter, they may well ask for additional security.

But until we know the amounts of money which they are prepared to put up, it is almost impossible to respond with respect to how much security which remains unencumbered in this company are prepared to put down to back up the amount they are putting forward.

THE COURT: I will hear you, counsel, and then I will give you my position. I am not going to sit here any longer today.

MR. GOLDMAN: My name is Sanford Goldman of the firm of Kaye, Scholer, Fierman, Hayes & Handler. We represent Anchor Hocking Corporation of Ohio.

You will forgive me, your Honor, if I mention points which have been characterized as a --

THE COURT: What is your interest in

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delivery on August 7, it might have that machine ready a week ahead of time.

MR. WINESTINE: Yes.

THE COURT: That is a normal management variation. But we will allow no abnormal variation which would permit anyone to receive favorable treatment above the schedule of deliveries which management had set before.

MR. WINESTINE: And if under normal procedure our press -- shipment on our press would have commenced, let's say, a few days ago, then upon consummation of our payments we would expect that the shipment would then begin immediately.

THE COURT: I think that is fair, yes.

MR. WESELY: Your Honor, with respect to the immediate problem, it may be that the representative of Talcott would have a proposal to make to at least tide us over this week and perhaps your Honor might like to hear from Mr. Hahn.

THE COURT: Yes, Mr. Hahn.

MR. HAHN: If it is a matter of just making funds available to meet this payroll, we are prepared to advance sufficient moneys to the trustee to do that, with the understanding that it will be

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ten per cent additional set forth in Column B.

THE COURT: But even if you turn back that certificate, they would still have a claim, whether or not it would be sustained or not, as an administration claim, they would still have a general claim, whether or not it would be sustained or not, a general claim as to additional amounts to be paid to get the machine over and above the contract price. That is my understanding of the law.

MR. LUTZ: Your Honor, my understanding of the physical facts may be wrong, but I understood it took sometimes four to six weeks for the process of delivery of these presses.

Mr. Polglase may be able to comment on that. If that is the case, there may be difficulty in taking the press three days after this notice is sent out.

MR. POLGLASE: Well --

THE COURT: Would you want to turn around and let everybody hear you, Mr. Polglase?

MR. POLGLASE: As far as well known in the trade any press of the type that the Orlando Sentinel is going to install is done on a sequential basis and what we are saying and what Mr. Lutz is

MR. GOULD: I would like to have it, Judge. I think it would be helpful. I don't think it is inappropriate at all.

THE COURT: Leave it the way it is.

MR. GOULD: Now, the last order paragraph here on page 4, I think there should be some reference there to the fact that this is without prejudice to the filing of a proof of claim if something goes wrong.

THE COURT: Proof of claim of what?

MR. GOULD: Onthe additional amount.

THE COURT: You have that right. You want it in. If you want it in here I will put it in. But you have a right to file a claim for alleged brief of contract as a general creditor.

MR. GOULD: Why not put it in there?

THE COURT: Except that this order primarily is designed not to cover that but to cover completion and to cover the issuance of the trustee's certificate.

MR. GOULD: I understand.

THE COURT: If you want it in here, I don't see any objectionto it. I think it might complicate things.

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MR. WESELY: Your Honor, it might, and I would want to make it completely clear that the ten per cent figure which is set forth is not one as to which it is judicially acknowledged that a bona fide claim does exist.

THE COURT: Wait a minute, we passed that a couple of days ago. Don't bring that up, Mr. Wesely. This additional ten per cent is made as an estimate, as a result of a number of conferences and on the judicial finding that this will cover the additional cost but not expected to cover any additional profit; but so as to avoid anything, any possible objection, we are not going to complete these deliveries unless they voluntarily consent to this and that is what they did on the record of their own free will. To resolve a dispute on the claim of the trustee for funds to complete and to meet the possible objections of other creditors.

Now, you are getting into an area that I don't want to get into. I say that as a matter of law if you don't waive your right, you have it and I have been careful not to have you waive your right.

MR. GOULD: It is understood we are

not waiving any rights.

THE COURT: I said that 50 times. I say it again.

MR. GOULD: We have it on the record. It is clear.

THE COURT: It is on the record as far as I remember for our last three meetings.

MR. GOULD: Fine. In those circumstances McClatchy will go along. We just have to check one figure.

THE COURT: I think you have the checks now, have you?

MR. GOULD: I will get them very shortly.

THE COURT: What do you mean by that?

MR. GOULD: I will telephone them and we will get the funds shortly.

THE COURT: On a New York bank?

MR. GOULD: Yes.

MR. ROBSON: On behalf of McCall Corporation I want to state that we are prepared to go along. We have available in court the check for the full amount of the balance and the ten per cent payment. It is our understanding that the machine is ready for delivery.

THE COURT: I don't know. We will check

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MR. LEVIN: We will be glad to carry out your Honor's suggestion.

THE COURT: All right. Thank you very much.

MR. WESELY: Your Honor, in that connection I would point out that the second ordering paragraph on Page 3 is not limited in time in terms of when the presses or, it does not represent any limitation on the press customers with whom the trustee is authorized to commence negotiations, whether they were expected to be delivered before or after September 8.

THE COURT: No, it does not.

MR. ROSEN: Your Honor, my name is Leonard Rosen. I am here on Atlantic City Press which is a B Group, and I would like to be heard.

THE COURT: Yes.

MR. ROSEN: There is one matter that has been discussed a number of times and I don't remember the final resolution of it, but it was the question of whether title should pass -- when this Column A payment is made and I would like to suggest that such a provision in the order would be of advantage not only to the purchasers of the presses.

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but also to the trustee and the estate.

The reason being this: It seems to me in equity --

THE COURT: I don't get just what you have in mind. You are concerned with another list of those whose contracts are by schedule supposed to be completed after September 8, are you not?

MR. ROSEN: Yes and no, your Honor. I think what I have to say is equally applicable to Schedule A --

THE COURT: Whom do you represent?

MR. ROSEN: Atlantic City Press, which is in Schedule B.

THE COURT: He is in what we call the late delivery.

MR. ROSEN: Yes, and what I am suggesting when and if he reaches agreement with the trustee --

THE COURT: When and if he reaches agreement with the trustee, that is the time we will sit down and reach all these details. We are not in a position to do that yet.

MR. ROSEN: I wasn't suggesting that. It seems to me when a man in Group A puts up his money for the balance of the contract, he should get

title to the press as it now exists. The reason for this being if we are unable to complete those presses it seems to me the estate ought to get the benefit of the fact that the man gets delivery of the pieces which would go to reduce his claim and it seems to me the man ought to get the benefit of getting those pieces because they are worth something to him.

THE COURT: We can not do it. We have given him better than that. We have given him a claim as an administration expense with unencumbered assets of appraised value of $4 million.

MR. ROSEN: That is only the money he puts up --

THE COURT: Counsel, you are speaking on behalf of somebody you don't represent and while I appreciate your suggestion, I don't think you have the right to advance a suggestion on behalf of anybody whom you do not represent and where there may be well a conflict of interest between the client that you do represent and that one on behalf of whom you do attempt to speak.

Thank you very much.

MR. ROSEN: Thank you, your Honor.

group, about?

MR. WESELEY: There are 11 customers in that group, your Honor.

THE COURT: What do their orders amount to?

MR. WESELEY: The total contract price of the 12 machines covered by those 11 customers is $7,672,000 of which there remains unpaid, of that amount, some $2-1/2 million.

I should point out to your Honor that what we are doing at this stage, now that we have had this somewhat of a turnaround period, has been to try, to the fullest extent that we can, to actually cost outwhat is required to complete the press and also complete the press at a fair and reasonable profit to the trustee in reorganization running this company.

Our accountants, in cooperation with the accountants of the company, are doing this with respect toeach of the press customers concentrating, of course, on those in the Near Group II group.

We have met, with these figures at hand, with at least three of the eleven customers, and we plan to meet with the others as soon as

[D. Verton]

counsel, later this week. We hope that Mr. Duviler is here from Sweden so we can work those out.

[D. Verton]

In addition, Mr. Duviler and Mr. Polglase have met with European press customers of An Press, who have agreed in principle to certain modifications in the contracts which would facilitate the resolution of the debtor's and An Press' differences with Nohab.

Your Honor referred to a letter which had been received from counsel of one of the labor organizations --

THE COURT: Does anybody have any questions about An Press or any of these other matters that have been reported upon? Apparently no questions.

You may go ahead.

MR. SHELTON: Your Honor --

THE COURT: Yes, Martin, what do you want?

MR. SHELTON: Your Honor, we have had one negotiating session with the trustee's counsel with respect to some of these presses.

As you know, your Honor, we do represent Triangle, which is in the for second group, and

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I just want Mr. Wasoly to know that with respect to some of the tests that he mentioned, they do put some hard burdens the way they look now on us in particular, and maybe that is because we paid a lot of money at the beginning. I think that it is not fair to everybody, but we are going to continue to negotiate and try to come to some accord, and I hope that we can. I have every belief that we will.

THE COURT: Martin, either you are going to wind up in this case filing a claim as a creditor for non-delivery of the machine, or you are going to get a machine and a press that works.

MR. SHELTON: I think that is right.

THE COURT: I would like to see you get a machine that operates and that is delivered to you in accordance with your contract as far as specifications are concerned.

However, I can't take too much of the creditors' money; I can't take much of it at all, if any, because we have not got it, in the first place, and use it to complete a machine where it is going to cost us to complete a considerable amount of money of the unpaid balance plus 20 percent.

Now, there is something that perhaps

may be done for you in fairness -- and I don't know what your situation is. But there was some machines which were said to be, according to discussions I had, according to many discussions I had either with management, with Mr. Wesely and Mr. Calçay, or some of their assistants. Some of those machines were called experimental machines, and part of the expense that went into that particular machine really should be charged as a development cost and borne by other machines, and not be all charged to the particular machine that was then being worked on. It was part of management's thought that if they got one of these so-called pilot presses out in the field it would lead to new orders and develop a new source of business. It was on a promotion basis that many of these things were calculated, and some of these, particularly some of these post January '70 deliveries which you have were calculated by Eco at the time at less than cost of production.

Now, we can't do that. The best we can do, perhaps, would be to adjust such charges as have already been made against a particular machine which would be better treated

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as a development expense and distribute that. How, there is an area of adjustment on some of these machines. We can sit down and talk about that. If you can't get along with Mr. Wesely and Mr. Galgay, you may find that I am a little more unreasonable. But I want to talk to you about this. You can't talk about getting deliveries, you can't talk about, "When are we going to get our machines?" and keep your hands in your pocket and hold your hand on the money. You got to put some on the table so that we can run that place, and the best way to do it is to sit down and come to some figure, that "We have so much that we are willing to pay up now to get these machines and here is some of the money that it cost to do the work," I think if you approach it from that point of view, a practical point of view, you may get somewhere.

You want something performed. Part of the work is done. You want it completed. For example, there are persons who call themselves painters, persons who call themselves decorators. You employ them and the painter or the decorator paints one side of your room and then comes to you

and says, "The union wages went up. I got to get $30 more for decorating this room and putting this finish on. Otherwise, I am going to walk out." You are going to give him that $30 and get that work finished.

MR. SHELTON: Either that or do the work myself.

THE COURT: You know what a smear job you would get if you painted it yourself. You have got to have the proper psychological approach to this. You got to have money in your hands and you got to be willing to pay it. Otherwise, you can't get your machines.

MR. SHELTON: I will take your advice.

THE COURT: Otherwise, you are going to be a creditor, rather than a purchaser. It is as simple as that.

MR. SHELTON: I think that we have negotiated in good faith.

THE COURT: What I am saying to you is for the benefit of the others, too.

MR. SHELTON: I understand that, Judge.

dispute between ourselves and General Electric, and the way we resolved that dispute was to escrow the amounts involved, and then we will litigate the matter with General Electric and have it resolved on that basis.

THE COURT: How much are we to get from Macon?

MR. WESELY: In excess of $100,000.

MR. GALGAY: $148,000, I believe.

MR. WESELY: More precisely, your Honor, $148,000.

Another order entered in connection with renegotiations with press customers was with the Press Publishing Company with respect to a press being built by the debtor for it. It resulted in the immediate payment tothe trustee of $425,000, and we expect that that press also will be delivered before the end of the year. Indeed, we hope to have that press ready for delivery by November 24th.

With respect to the American Can Company, the metal decorating press, or presses, I should say, the contracts that that company had with the debtor were renegotiated, and American Can Company paid to the trustee some $226,000.

I should point out that since we are engaged in very substantial negotiations with a large number of other press customers, these payments represent in excess of

$1 million more than the original contract prices which prevailed as between the debtor and the Long Island Daily Press, Press Publishing Company, American Can Company and Dayton.

THE COURT: That extra money: what is it? One million?

MR. WESELY: In excess of one million.

THE COURT: And that was the readjustment of the price in order to justify the continuance of the delivery, which was voluntarily paid by each one of these purchasers. This was in excess of the ten per cent which was paid by the first group.

MR. WESELY: Yes, indeed, and it varies with each of the press customers essentially by reason of the cost to complete, which the company must pay to finish the particular press in question.

I should say, your Honor, that we have not with respect to any press customer disaffirmed or suggested or recommended the disaffirmance of any contract. We are endeavoring to renegotiate all contracts to the extent feasible.

THE COURT: That was an adjustment voluntarily paid by the customer?

MR. WESELY: Yes, your Honor.

THE COURT: Now on each one of these negotiations I have the same observation that I made with reference to the Newhouse contract. These were not the result of an overnight, quick decision. They resulted and flowed from weeks of negotiation, in which everybody participated, in which they consulted with the Court on many occasions and on which we received complete cooperation from everybody.

MR. WESELY: Now, your Honor, there were two other significant orders entered since our last hearing. One related essentially to the European operations of R. Hoe & Company and its wholly-owned subsidiary, Ampress, S.A., and there was an agreement reached by the subsidiary with A. B. Nohab, its subcontractor in Sweden, which is the wholly-owned subsidiary of Bofors, and there was a letter, a confirmatory letter in substance signed by the trustee and directed to the Nohab Company, which your Honor authorized, and, again, it contains a number of provisions that are best read rather than described, and I would be delighted to do that if anyone wants further details or information.

This order is, of course, on file here.

Essentially, the basic purpose that motivated the execution of that letter and the agreement between the

RELEVANT EXCERPTS FROM TRANSCRIPT OF DECEMBER 30, 1971

claim. I don't think the amount of the claim is --

MR. GRASHOF: I doubt very much that there will be any dispute as to the basic facts.

MR. GEWERTZ: I have a list and some of them I don't have in my possession because they consist of transcript references which are part of the record and prior orders of Judge Ryan which we have referred to in our brief in support of our position.

THE COURT: Well, I assume you are talking about backup material with respect to the exhibits to your proof of claim, is that correct

MR. GEWERTZ: Well, not exactly, your Honor. In support of our factual support for our legal theory that there was no "novation" as was the trustee's main legal theory here. There was no waiver of our right to seek damages for breach of the original contract between the parties.

THE COURT: Well, is there or is there not an issue of fact as to whether or not there was a novation or is it just an issue of law, an undisputed fact?

MR. GEWERTZ: It would seem to me an

issue of law based upon facts established on the record of these proceedings.

THE COURT: Well, I see no problem at the moment.

I would assume that in due course I would receive legal briefs and if the trustee makes assertions of fact in his brief which you wish to contradict and offer evidence in support of your contradiction of, then I would, with the consent of the trustee, permit you to supplement the record by offering additional documents as exhibits. If no consent is given then I would call this proceeding again for the purpose of giving you an opportunity to offer these.

MR. GEWERTZ: In that event, we don't need to put in any documents now because whatever we have in the brief, whatever exhibits I have, are merely to support the accuracy of what I say in the brief.

THE COURT: So it is agreed then that the question of the propriety of this claim is basically a question of law that must be determined on the basis of legal arguments and legal precedents.

MR. GEWERTZ: Based upon the facts as

evolved in the reorganization proceeding itself.

THE COURT: Yes.

MR. GRASHOF: As to which there doesn't now appear to be any dispute.

THE COURT: Do counsel wish to present oral argument at this time?

MR. GRASHOF: All I wanted to do, your Honor, was to perhaps shortcut some portion of probably both briefs and just let you know how the situation arose and generally what your legal arguments are.

THE COURT: That would be helpful.

MR. GRASHOF: Because it is an unusual situation.

The petition which the debtor filed in these proceedings was filed in July of 1969. At that time, there were approximately 90 press contracts or contracts for press equipment on the debtor's books. I do have a schedule but I don't think it is necessary to put them in evidence. It's a two-page schedule showing what the various equipment was.

Now, about 40 of these contracts were for presses which were in various stages of completion.

At the time the petition was filed the debtor did not have any money in the bank to meet its payroll or to purchase necessary materials to complete its presses and to use Judge Ryan's expression, the cupboard was bare.

As a result, Judge Ryan was faced with a crisis as to if the petition for reorganization was going to be approved, where was the debtor going to get the funds to carry on the business until the reorganization could take place.

Well, the answer to that and the only answer had to be, from the press customers.

It was a question as to whether or not the press customers would prepay balances that were or would become due on their contracts when the presses were completed, and pay an additional sum to defray the expenses of the trustee and of the company during the process of completing those presses. This was the subject of, I believe, two hearings early in July and at the conclusion of the second hearing the press customers whose presses were in the most advanced stages of completion agreed to prepay their balances and to pay a 10 per cent premium on their contract price.

THE COURT: Also to be prepaid? The 10 per cent also to be prepaid?

MR. GRASHOF: Also to be prepaid, yes. Now, they weren't just paying this money without any security whatsoever. They were to get a trustee's certificate which would secure any advances which they made beyond what they had made prior tothe filing of the petition. In other words, their advances up to the filing of the petition were what we call --

THE COURT: General claims?

MR. GRASHOF: General claims but any monies that they advanced to the trustee were secured.

With these funds, the debtor was able to complete the manufacture of these near, what we call group 1, presses.

Now, that represented approximately ten press customers. There were still about 40 more press customers who were split up into two other groups, what we call group 2 and group 3, group 2 being the ones that we hoped we would be able to complete within the next six months, and group 3 were presses which were to be completed

3. COPY OF ORDER TO SHOW CAUSE DATED JULY 14, 1969

Identical to Order to Show Cause printed herein at pages A12 to A26.

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4. COPY OF ORDER NUMBER 5 DATED JULY 22, 1969

Identical to Order Number 5 printed herein at pages A27 to A31.

5. SCHEDULE OF PAYMENTS BY ABARTA CORP. (D/B/A PRESS PUBLISHING CO.) TO THE DEBTOR AND THE TRUSTEE

SUMMARY OF PAYMENTS RECEIVED BY R. HOE & CO., INC. FROM ABARTA CORP. (PRESS PUBLISHING CO.) PRIOR TO AND SUBSEQUENT TO FILING OF PETITION

Date Payment Received	Contract Amount (Including Additions)	Renegotiated Amount	General Electric Equipment	Total Payments Received
PRE-PETITION PAYMENTS				
8/30/68	$ 84,000.00	$ -----	$ -----	$ 84,000.00
11/6/68	83,335.80	-----	-----	83,335.80
11/6/68	-----	-----	5,716.40	5,716.40
12/4/68	60,427.00	-----	-----	60,427.00
1/2/69	60,427.00	-----	-----	60,427.00
1/31/69	60,427.00	-----	-----	60,427.00
2/27/69	60,427.00	-----	-----	60,427.00
4/1/69	60,427.00	-----	-----	60,427.00
5/5/69	60,427.00	-----	-----	60,427.00
6/2/69	60,427.00	-----	-----	60,427.00
Total Payments Prior to 7/7/69	590,324.80	-----	5,716.40	596,041.20 (1)
POST-PETITION PAYMENTS				
10/9/69	64.00	-----	51,719.60	51,783.60
11/3/69	246,465.00	177,028.00	-----	423,493.00 (2)
Total Payments After 7/7/69	246,529.00	177,028.00	51,719.60	475,276.60
TOTAL	$836,853.80 (3)	$177,028.00	$ 57,436.00	$1,071,317.80 (3)

Excludes net effect of payment to Press Publ. for $4,520.00 during June, 1971 by R. Hoe

(1) Does not include customer's remittance of check dated 7/1/69 for $60,427.00 as "Stop Payment" issued to bank (see attached).

(2) Represented by two (2) checks deposited on 11/3/69 - 10/24/69 $418,063
11/3/69 5,430

(3) Amount short by 20¢ resulting from shortage in customer's 11/3/69 remittance

RMG/lc - 4/6/72

6. STIPULATION OF HISTORICAL FACTS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization
-of-	:	of a Corporation
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	STIPULATION OF HISTORICAL FACTS

IT IS HEREBY STIPULATED by and between Winthrop, Stimson, Putnam & Roberts, counsel for John J. Galgay, the Trustee of R. Hoe & Co., Inc. ("Hoe") in these proceedings and Wachtell, Lipton, Rosen & Katz, counsel for Abarta Corp. (d/b/a Press Publishing Co.) that the Court may consider the following facts with regard to the Trustee's objections to the claim of Abarta Corp. in the amount of $177,028.

1. Press Publishing Company ("Press") is a division of Abarta Corp., a corporation organized and existing under the laws of the State of Pennsylvania. Press publishes a daily and Sunday newspaper, the Atlantic City Press, in Atlantic City, New Jersey.

2. On November 1, 1968, Press entered into an agreement with R. Hoe & Co., Inc., the Debtor herein, to purchase a six-unit Colormatic press with a 3:2 folder and a 3-arm Reel, Automatic Tension and Full-Speed Splicing Mechanism. The purchase price was $836,679.00 net, f.o.b. Hoe's plants. The contract also stated that, based on Hoe's current workload, it was expected

that the press would be shipped on or about August 1, 1969. The contract provided for payment by Press of 10% of the total purchase price upon acceptance of the agreement; 10% upon commencement of engineering; 65% in monthly installments between the commencement of manufacturing and the estimated time of shipment; and the balance (15%) when the press would be installed and ready for commercial operation.

3. All of the presses manufactured by Hoe, including the Colormatic press which was the subject of the November 1, 1968 contract between Press and Hoe were custom made for the particular press customers' needs and specifications. The average delivery time for a press of the size and type ordered by Press was approximately one year from the date the contract for any such press was signed. The Colormatic press ordered by Press and eventually manufactured by Hoe contained features that were different from presses made by other press manufacturers and Press would not have been able to obtain a press with the same features from any such other manufacturer.

4. The original contract between Hoe and Press called for a price of $836,679 which included the cost of certain auxiliary equipment aggregating $7,884.00. Subsequently, on June 20, 1969, an addition was made to the contract to include covering ten rollers at a cost of $175.00.

5. According to the Debtor's records, Press made the following payments to the Debtor:

Date	Amount	
August 30, 1968	$ 84,000.00	
November 6, 1968	83,335.80	
November 6, 1968	5,716.40	(For General Electric Equipment)
December 4, 1968	60,427.00	
January 2, 1969	60,427.00	
January 31, 1969	$ 60,427.00	
February 27, 1969	60,427.00	
April 1, 1969	60,427.00	
May 5, 1969	60,427.00	
June 2, 1969	60,427.00	
	$596,041.20	

6. On July 7, 1969, Hoe petitioned this Court for proceedings under Chapter X of the Bankruptcy Act. The Court adjourned the hearing on the petition until July 9, 1969 at which time the petition was approved. At that time, the Debtor was confronted with a cash crisis and an immediate need for several million dollars to enable it to continue in operation. Counsel for Press was present at the hearing on July 9, 1969 when a suggestion was made by counsel for one of the press customers and joined in by others that certain press customers would prepay the balances due on their contracts if they would be given assurances of security for such payments. Counsel for Press informed the Court at that time that its press was due for delivery starting September 15, 1969 and that it was willing to pay the balance

due if given assurance that Press would receive its press free of liens.

7. In order to meet the cash crisis and to raise the necessary funds to continue the Debtor's business, on July 14, 1969 an Order to Show Cause was entered by the Court upon application by the Trustee, which directed the Debtor's press customers, including Press, to show cause why it was not in the best interests of the Debtor's Estate to direct the Debtor to devote its principal efforts to manufacture and deliver the presses of certain customers upon prepayment of the balance of their contract prices plus an additional payment, which in the case of those customers whose presses were scheduled for delivery before September 8, 1969, amounted to 10% of the original contract price and which in the case of those customers whose presses were scheduled for delivery subsequent to September 8, 1969, an amount to be negotiated by such customers with the Trustee. On July 17 and July 22, 1969 hearings were held with respect to the order to show cause. At those hearings the press customers represented thereat, including Press, were advised by the Trustee's attorneys and the Court that unless sufficient press customers agreed to prepay the remaining balances on their contracts and pay the additional premium requested by the Trustee, it was unlikely that the Debtor could continue operations. The press customers were also informed that it was unlikely that those press customers who did not agree to prepay the remaining balances on their contracts and pay the additional premium requested by the Trustee would get delivery of their presses. The Court and Trustee's counsel informed the creditors

that it was necessary to generate sufficient cash to continue the Debtor's operations for sixty (60) day period to provide the Trustee with an opportunity to obtain financial information sufficient to interest potential purchasers in the Debtor's business as a going concern so that "all of the presses for which contracts have been made can be completed and delivered to customers."

At the July 22, 1969 hearing, the Court stated, in remarks applicable to all press customers represented thereat, including Press, that those customers who paid the additional premium would have the right to file a proof of claim for damages against the Debtor for failure to deliver their presses at the original contract price, and would not waive such right by agreeing to pay such premium. The Court also stated that it would not be necessary to expressly provide for such non-waiver in the July 22, 1969 Order. However, the Trustee's counsel stated:

> "I would want to make it completely clear that the ten percent figure which is set forth is not one as to which it is judicially acknowledged that a bona fide claim does exist."

On July 22, an order was signed directing the Debtor to devote its principal efforts to the manufacture and delivery of certain presses scheduled for delivery prior to September 8, 1969, which did not include the press ordered by Press.

8. With respect to press customers whose presses were scheduled for delivery after September 8, 1969, such as Press; the order of July 22, 1969 gave the Trustee specific authority:

> "to commence negotiations with all other press customers of the Debtor to determine the amount of prepayment and additional sum to be paid to the

> Trustee by each such press customer, said amount to be subject to approval of this Court, due regard being had for the rights and interests of all creditors of the Debtor."

At least as early as August 1, 1969 the Trustee's counsel and Press' counsel began such negotiations. The negotiations continued through August, September and October 1969 and culminated in the entry of an order on November 3, 1969 which authorized the Trustee "to direct the Debtor to devote its principal efforts to the manufacture and delivery of the press ordered by Press with auxiliary equipment upon payment to the Trustee of $423,493." That amount included an increase of $177,028 in the purchase price of the press. The Court's order also provided that $342,787 of the amount paid by Press "until the time said press and equipment is ready for delivery with free and clear title, shall constitute actual and necessary costs and expenses of preserving the Estate of the Debtor."

9. The petition of the Trustee in support of the order of November 3, 1969 stated:

> "3. Extensive negotiations have been had with counsel for Press Publishing Co. ("Press") over many weeks during which time counsel for the Trustee has presented to counsel for Press the estimates of cost data upon which the renegotiations have proceeded. Recognition has been had of the fact that while there are common features to the various printing presses manufactured by the Debtor, each is designed to the order of the particular customer and therefore is custom made. As a result of the negotiations referred to above agreement has been reached with Press pursuant to which Press has agreed to prepay $423,493 immediately to the Trustee. That payment includes an increase of $177,028 in the purchase price of the Hoe equipment ordered by Press."

10. Prior to entry of the order on November 3, 1969, Press had, on October 9, 1969, paid the Debtor $51,783.60 for certain power drive equipment Hoe had ordered from General Electric Company for use with Press' press equipment. On that same day Hoe paid General Electric for that equipment. On November 3, Press paid the Trustee $423,493.00.

11. Delivery of the press equipment commenced on November 26, 1969 and was substantially completed by January 15, 1970, although some deliveries followed that date. By letter dated January 7, 1970, Press filed its proof of claim in the amount of $177,028.00, the exact amount of the additional sum it paid over its original contract price. The proof of claim recites as follows:

> "3. That the consideration of this debt or liability is as follows: The said Trustee refused to affirm a contract (a copy of which is annexed hereto) entered into between the claimant and the Debtor prior to the filing of the petition herein which provided for the purchase by the claimant of a six unit colormatic press. Thereafter, the claimant and the Trustee entered into an agreement, which was embodied in an Order of this Court whereby the claimant paid the Trustee the sum of $177,028 in excess of the contract price in order to obtain the delivery of the said six unit colormatic press. The payment of said premium over and above the contract price constitutes actual and necessary expenses of preserving the Estate of the Debtor subsequent to the filing of the petition herein. In the alternative, the payment of said premium constitutes damages to the claimant arising from what was in substance the rejection by the Trustee of an executory contract between the Debtor and the claimant."

12. Press incurred certain expenses in connection with the mounting of the General Electric press drives at Press' plant (rather than at Hoe's plant) and for certain corrective work for

which it sought reimbursement from the Trustee. The Debtor's staff and representatives of Press considered the validity of those charges and on June 16, 1971, the Trustee issued a check in the amount of $4,520.88 to Press in settlement of those claims. The Trustee also incurred expenses of $1,138.95 in replacing certain defective parts which would have been covered by the Debtor's warranty obligation to Press.

Dated: New York, New York
May 2, 1973

WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for John J. Galgay
Trustee in Reorganization

By _____

WACHTELL, LIPTON, ROSEN & KATZ
Attorneys for Press Publishing Co.

By _____

7. STATEMENT OF PARTIES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for the Reorganization of a Corporation
-of-	:	
R. HOE & CO., INC.,	:	No. 69 B 461
Debtor.	:	STATEMENT OF PARTIES AND STIPULATION

IT IS HEREBY STIPULATED as follows:

Neither the Trustee nor Abarta Corp. (d/b/a Press Publishing Co.) wishes to present oral evidence on the question as to whether the claim of Abarta Corp. should be expunged, and both parties agree that the Court shall, in the event it decides not to expunge the claim, then consider in a separate proceeding whether or not the claim of Abarta Corp. should be reduced in amount.

Dated: New York, New York
May 2, 1973

WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for John J. Galgay, Trustee

By _____

WACHTELL, LIPTON, ROSEN & KATZ
Attorneys for Abarta Corp.
(d/b/a Press Publishing Co.

By _____

MEMORANDUM OPINION, RYAN, J.

FILED
U.S. DISTRICT COURT
JAN 11 12 31 PM '74
S.D. OF N.Y.

MICROFILM
JAN 14 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

R. HOE & CO., INC.,

Debtor.

MEMORANDUM OPINION

69 B 461

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40205

Paper #536

RYAN, J.:

The Debtor's Chapter X reorganization petition, after hearing, was approved on July 9, 1969. The Debtor was formany years an internationally known manufacturer of rotary printing presses and of other machinery. A Chapter X Trustee, appointed by the Court, was empowered to continue the Debtor's business and to formulate and submit a plan of reorganization.

The matter now before the Court concerns a proof of claim filed by ABARTA CORP. (d/b/a Press Publishing Co.), a press customer, for $177,028. and the Trustee's objection to it. Press Publishing Company (PRESS PUBLISHING) is a division of ABARTA, a Pennsylvania corporation. PRESS PUBLISHING publishes a daily and Sunday newspaper, the Atlantic City Press, in Atlantic City, New Jersey. The ABARTA proof of claim is filed as an administration claim against the Trustee, or, in the alternative, as a trade creditor's claim against the Debtor Estate.

The Trustee's objections were referred to Magistrate Raby for hearing and recommendation. The parties, while before Magistrate Raby,

entered into a stipulation of historical facts. He took no testimony and, upon the record before him, recommended that the ABARTA claim be allowed in full as an administration claim.

I conclude that the claim should be expunged.

The Debtor contracted with PRESS PUBLISHING on November 1, 1968 to manufacture and sell a six-unit printing press and related equipment. The purchase price was $836,679. The contract provided that:

> "The purchase price is firm unless Hoe is prevented from completing manufacture and shipment within the time stipulated due to circumstances described in Section 4 or by some act or delay on Buyer's part."

Section 4 of the purchase agreement stated in part:

> "Hoe shall not be liable for loss or damage resulting from delay in performance caused by fires, floods, strikes, labor disputes, labor shortages, inability to secure materials....or any other cause, whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of Hoe which may delay or prevent Hoe's performance hereunder."

At the date of the petition for reorganization, PRESS PUBLISHING had paid $596,091 to Debtor on account of the purchase price. Claimant had received delivery of none of the machinery manufactured for the order, and Debtor was then without sufficient funds to continue to produce the press for claimant. Facing a cash crisis to meet payrolls and to purchase parts to complete the presses on order, the Trustee petitioned the Court for authority to complete certain presses for customers who agreed to pay in full the unpaid balance of the purchase price plus 10% in addition to the original contract price.

Thereafter the Trustee negotiated with PRESS PUBLISHING which agreed to pay $177,028 over the contract price for its press, in addition to paying immediately and in full the balance of the contract price. The Trustee issued a Certificate of Indebtedness as security for the payment to him of $342,787, which included the increased price of $177,028. By order of November 3, 1969 entered on consent of counsel for claimant, the Court approved the agreement between the Trustee and PRESS PUBLISHING and authorized the Trustee

> "...to direct the Debtor to devote its principal efforts to the manufacture and delivery of the press ordered by Press with auxiliary equipment.....".

The order provided that the Trustee's certificate would be null and void upon notice to PRESS PUBLISHING that the equipment was ready for delivery. Delivery of the press commenced on November 26, 1969 and was substantially completed by January 15, 1970. The claim filed by PRESS PUBLISHING states in part that

> "...the claimant and the Trustee entered into an agreement, which was embodied in an Order of this Court, whereby the claimant paid the Trustee the sum of $177,028 in excess of the contract price in order to obtain the delivery of the said six-unit colormatic press."

There is no dispute that the press was, in fact, completed by the Trustee and delivered to PRESS PUBLISHING in accordance with this agreement.

At the date of the reorganization petition, claimant faced the loss of more than a half million dollars previously paid for a press that Debtor could not deliver; more important to PRESS PUBLISHING, it faced

non-delivery of its much needed equipment, which it could not receive if the Trustee had no funds to complete the manufacture. Claimant was faced with a business decision: (1) either to pay no more and to assert an unsecured claim for the money it had paid on account to the Debtor; or (2) to agree with the Trustee to pay immediately the balance of the purchase price plus an additional negotiated amount to enable the Trustee to complete the press. PRESS PUBLISHING chose the latter alternative. It cannot now have the benefit of its choice to acquire its press and, at the same time, assert a claim for the money it agreed to pay to enable the Trustee to manufacture it.

During the Court hearings on the Trustee's original application for authority to complete the presses of those who agreed to pay a 10% premium, it was made clear to all present, including the instant claimant, by the Court that:

> "If delivery is made, you (the customer) would not get any refund whatsoever." (Transcript of 7/17/69, p. 152)

Counsel for the Trustee stated on the record concerning the so-called premium payment:

> "...where there are moneys paid to the trustee that those will be treated, I think as it was fairly stated, that those will be treated as administration expenses in the event that the customer did not receive his press as expected.
>
> " However, upon receipt of the press there would be no administration claim, no trustee obligation of any sort." (Transcript 7/17/69, p. 154)

Against this background, and considering the position of claimant, its choice to agree with the Trustee for the payment required to enable the Trustee to complete its press, coupled with the fact that the Trustee did perform his part of the negotiated agreement and did in fact deliver the press to claimant, I can see no basis for any claim, administrative or otherwise, arising out of this transaction. Accordingly, the claim of PRESS PUBLISHING for $177,028 is disallowed and expunged.

Let an order so providing be settled on notice.

Dated: New York, New York
January 10, 1974

SYLVESTER J. RYAN
United States District Judge

A 159

ORDER NUMBER 152 DISALLOWING CLAIM FILED BY ABARTA CORP. (D/B/A PRESS PUBLISHING CO.)

FILED
U.S. DISTRICT COURT
JOHN F. GALGAY
FEB 15 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter	In Proceedings for the Reorganization of a Corporation
-of-	
R. HOE & CO., INC.,	69 B 461
Debtor.	

Paper #546

ORDER NO. 152 : DISALLOWING THE CLAIM OF ABARTA CORP., d/b/a PRESS PUBLISHING CO.

This matter having come before the Court upon the objection by the trustee of R. Hoe & Co., Inc. ("Hoe") to a proof of claim filed by Abarta Corp., d/b/a Press Publishing Co. ("Press Publishing"), for $177,028.00 as an administrative claim against the trustee of Hoe or in the alternative as an unsecured creditor's claim against the estate of Hoe, and the Court having referred the trustee's objections to a Magistrate for hearing and recommendation, and the Magistrate having recommended that the said claim be allowed as a general unsecured claim, and the Court having considered the Record re Trustee's Objection to Proof of Claim filed by Abarta Corp. (d/b/a Press Publishing Co.), filed on May 3, 1973, including a stipulation of facts dated May 2, 1973, entered into by Press Publishing and the Hoe trustee, the recommendation of the Magistrate, the memoranda submitted in sup-

Order Number 152 Disallowing Claim Filed by Abarta Corp. (d/b/a Press Publishing Co.)

port of and in opposition to said claim both to the Magistrate and to the Court, and the Court having filed its opinion herein on January 11, 1974, and the Court having inadvertently stated in said opinion that the Magistrate recommended that the said claim be allowed as an administrative claim, it is

ORDERED, that the claim of Press Publishing in the sum of $177,028.00 be, and the same hereby is, disallowed and expunged, and it is further

ORDERED, that the third line on page 2 of the opinion of the Court filed on January 11, 1974 be corrected to read "in full as a general unsecured claim."

D/ R Tyler J.

United States District Judge

Dated: New York, New York
January , 1974.

Filed Jan 1,

A 161

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	In Proceedings for the Reorganization of a Corporation
R. HOE & CO., INC.,	:	
Debtor.	:	69 B 461
	:	NOTICE OF APPEAL

NOTICE is hereby given that Abarta Corp., d/b/a Press Publishing Co., a claimant in the above-entitled proceedings, hereby appeals to the United States Court of Appeals for the Second Judicial Circuit from the order of this Court (Order No. 152) entered in the above-entitled proceedings on February 15, 1974 disallowing and expunging its claim.

Dated: New York, New York
March 12, 1974.

WACHTELL, LIPTON, ROSEN & KATZ

By _____
A Member of the Firm

Attorneys for Claimant
Abarta Corp. (d/b/a Press
Publishing Co.)
Office and Post Office Address:
299 Park Avenue
New York, New York 10017
Tel. No. (212) 371-9200

TO:

WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for Trustee
40 Wall Street
New York, New York

Due and timely service of TWO copies
of the within APPENDIX is hereby
admitted this 27th day of JUNE 1974

.....

Attorneys for APPELLEES

RECEIVED 2 copies
1974 JUN 27 PM 3 52
ATTORNEYS FOR Petitioner/Cross